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Holbein — A New Erasmus Discovered?

INCORPORATING **STOLEN ART ALERT**

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COVER: ANDY WARHOL (?), *Self-Portrait.* Silkscreen on canvas, 24" x 20". Coll. Joe Simon; photo courtesy Joe Simon. See story on p. 36.

VAN GOGH'S *NIGHT CAFÉ* IS SUBJECT OF OWNERSHIP DISPUTE

YALE FILES PREEMPTORY ACTION TO QUIET TITLE
HEIR OF PRE-BOLSHEVIK RUSSIAN OWNER — MOROZOV — COUNTERCLAIMS

The Night Café, one of Van Gogh's most famous paintings, has hung in Yale University's Art Gallery for almost 50 years, ever since an alumnus, Stephen C. Clark, bequeathed it to the university in 1961. Now, Yale's right to the work is being challenged by the great-grandson of Ivan Morozov (also spelled "Morosov"), the collector from whom it was confiscated by the Bolsheviks in 1918.[1]

"The confiscation of this artwork – and others – by the Bolshevik government, . . . while 'contrary to American values,' was, Yale says, viewed as legal, and has been upheld in courts of law in the U.S. and Europe."

The painting is one of many works taken from Russian aristocrats and industrialists by the government — and then nationalized — in 1918 in the wake of the Bolshevik revolution. Some of the paintings are now prized possessions of the Hermitage and Pushkin museums in St. Petersburg and Moscow. Others were sold off in a series of sales in Germany in the 1930s, when the Russian government was strapped for cash. *The Night Café* was one of those. After being hung in the Museum of Modern Western Art in Moscow (now the Pushkin), it was, according to court documents, sold to Mr. Clark in 1933, when the Knoedler Gallery in New York, acting on Clark's behalf, purchased it from the Matthiesen Gallery in Berlin, which, in turn, had purchased it from an entity of the Soviet government set up for the purpose of effecting such sales.[2]

Pierre Konowaloff, a naturalized French citizen who claims to be Morozov's great-grandson and sole legitimate heir, approached Yale in 2008. In March of that year, his wife sent an email inquiring about the provenance of the Van Gogh; a few months later, in July, Pierre's attorney, Allan Gerson — coincidentally, a Yale Law School graduate — wrote to the Director of the Yale Art Gallery alleging, according to Yale's Complaint, "that Konowaloff owned the Painting." The next step is disputed by the parties. Konowaloff's attorney says that he sent a "draft complaint" clearly marked "For Discussion Purposes" in response to a specific request by Yale's General Counsel inviting an exchange of views; Yale's Complaint, however, described it as an action implying "intent to initiate litigation."

Yale responded by canceling the scheduled discussions and filing a declaratory judgment action in federal court in Connecticut to quiet title. In launching a preemptory strike, Yale is following in the footsteps of other museums, such as the Toledo Museum of Art and the Detroit Museum of Art, which recently succeeded with the same strategy in quieting title for a Gauguin and a Van Gogh painting, respectively, in their collections that were the subjects of claims by heirs of pre-World World II owners.[3]

Yale's Complaint outlines the history of its ownership of the Van Gogh painting, a history during which, it asserts, the painting has

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1 *Yale University v. Konowaloff*, No. 309CV00466 AWT (D. Conn., filed March 23, 2009).

2 See Answer and Counterclaim, dated May 21, 2009, ¶ 75. Yale's Complaint says that the work was sold to Knoedler and then from Knoedler to Clark; but the Counterclaim, citing a 1933 telegraph, asserts that Knoedler was simply acting on Clark's request. The Soviet entity that sold the work was the "Central Office for State Trading of the Union of Soviet Socialist Republics for the Purchase and Sale of Antique Objects."

3 See Steven Alan Reiss and Jonathan Bloom, "The Good Faith Owner and the Tardy Heir: Recent Cases Portend More Aggressive Defenses Against Holocaust-Era Art Claims," *IFAR Journal*, Vol. 10, no. 2 (2008), p. 13.

VINCENT VAN GOGH, *The Night Café, 1888.* **Oil on canvas. 28 ½ x 36.3 inches. Coll. Yale University Art Gallery; the subject of an ownership dispute.**

been extensively exhibited, publicized, and reproduced, with Yale's ownership prominently displayed. Indeed, the painting was lent to the Metropolitan Museum's blockbuster 1984 van Gogh exhibition: "Van Gogh in Arles," and it is included in the de la Faille Van Gogh catalogue raisonné (Vol. 2, no. 463). In both cases, Yale and Stephen Clark are listed in the provenance. Clark's bequest itself was publicized both in the U.S. and France. But, in all the years that the work has been in Yale's collection, the university asserts, neither Konowaloff nor any of his family has made a claim for it. The Statute of Limitations, therefore, according to Yale, has expired for this "threatened" ownership claim; Konowaloff has slept on his "putative rights"; and Yale should be permitted to "enjoy quiet title."

Moreover, the confiscation of this artwork — and others — by the Bolshevik government without compensation to the owners, while "contrary to American values," was, Yale says, viewed as legal, and has been upheld in courts of law in the U.S. and Europe. Therefore, legal title was passed to Clark when he purchased the work, and from him, to Yale.

THE ACT OF STATE DOCTRINE

The Act of State Doctrine, which says that:

> . . . courts in the United States will generally refrain from examining the validity of a taking by a foreign state of property within its own territory, or from sitting in judgment on other acts of a governmental character done by a foreign state within its own territory and applicable there. . . .[4]

has been invoked by U.S. courts in the past to uphold the Bolshevik nationalizations. In a famous case in the 1970s, *Stroganoff-Scherbatoff v. Weldon; Stroganoff-Scherbatoff v. Wrightsman,*[5] the heir to the aristocratic Strogonoff collection claimed two works that were confiscated by the Bolsheviks, sold by the Soviets, and acquired by prominent American collectors. The Federal District Court in New York, however, agreed with the defendants' claim that the suit was barred by the Act of State Doctrine.

In this regard, the courts have made a distinction between World War II-era confiscations of artworks by the Nazis from Jewish owners, or other Nazi victims, and confiscations by the Bolsheviks of possessions of Russian nationals living within the Russian border.

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4 Restatement (Third) Foreign Relations Law § 443 *Act of State Doctrine: Law of the United States.*

5 *Stroganoff-Scherbatoff v. Weldon,* 420 F. Supp. 18 (S.D.N.Y. 1976). Although Strogonanoff-Scherbatoff brought separate suits against the current owners, Henry Weldon and Charles B. Wrightsman (the latter donated his work to the Metropolitan Museum of Art), the court consolidated the cases.

"Furthermore, Konowaloff says, Yale has "unclean hands"; it had reason to believe . . . that Mr. Clark either lacked good title or, at the very least, that his title was suspect. Yet the university took no meaningful steps to ascertain rightful title."

THE CLAIMANT'S RESPONSE

In a detailed Answer and Counterclaim, Konowaloff says, essentially, not so fast. Yale might have received this painting from Clark, and publicly displayed it, but the university never "owned" it and "cannot meet its burden" under Connecticut law "of showing that it has good title to the Painting." The taking by the Bolsheviks was an "illegal confiscation," not a "nationalization," which, the Counterclaim asserts, only applied to industry and real property, not to "confiscation of this Painting or the Morozov art collection." In fact, Konowaloff says, the Bolshevik "theft was deemed by the United States at the time as a violation of customary and conventional international law, and was one of the reasons for the United States' long delay (until 1933) in recognizing the USSR."

In invoking the violation of "international law," it would appear that Konowaloff intends to take advantage of an exception to the Act of State Doctrine, wherein the Doctrine:

> will not be applied in a case involving a claim of title or other right to property, when the claim is based on the assertion that a foreign state confiscated the property in violation of international law.

Elsewhere, he asserts that the Bolshevik regime was not a "sovereign" state, nor is it an "extant" government, assertions that, if upheld by the court, however unlikely, might also mitigate against the application of the Act of State Doctrine.[6]

Furthermore, Konowaloff says, Yale has "unclean hands"; it had reason to believe, from "even a cursory examination of the Painting's provenance, that Mr. Clark either lacked good title or, at the very least, that his title was suspect. Yet the university took no meaningful steps to ascertain rightful title." It didn't publicize the Morozov name in the provenance; it never tried to locate the Morozov heirs in Paris; nor did it try to determine whether the family had "voluntarily given up any claims to the Painting."

Konowaloff, therefore, is asking for possession of the work, a jury trial, and at least $75,000 in damages. If he is successful, it will no doubt open the courts to many other such claims, as numerous works that were confiscated by the Bolsheviks are currently in private and public collections in the U.S.

PREVIOUS CLAIMS

In recent years, there have been several attempts by heirs of the two great early twentieth-century Russian collectors, Ivan Morozov and Sergei Shchukin, to claim artworks confiscated from their families by the Bolsheviks. None have been successful. In 2003, for example, Shchukin's grandson, Andre Marc Delocque-Fourcaud, filed suit for compensation (unspecified amount) when some of his family's artworks housed in

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6 A recent case cited by Konowaloff, *Chabad v. Russian Federation*, 528 F. 3d 934; 381 U.S. App. D.C. 316; 2008 U.S. App. LEXIS 12566, (decided June 13, 2008), addressed the issue of the confiscation by the Bolshevik regime in Moscow in 1917 of a historic library belonging to the Chabad, a nonprofit Jewish religious organization. The District Court ruled that it didn't have jurisdiction over the claims, but even if it had, "these claims would be barred by the act of state doctrine." The US Court of Appeals added that: "The events of 1917-1925 all occurred within Russia, and thus were official acts of a sovereign nation regarding property within its borders. We could not grant the relief without invalidating those acts." It went on, however, to consider the fact that the regime in Russia has changed with the collapse of the Soviet Union, but noted that viewing the Act of State with flexibility because of the regime change, would "embroil the court in a seemingly rather political evaluation of the character of the regime change itself. . ." Nonetheless, the appellate court "vacated" the District Court's "application of the act of state doctrine to the library claims" with the caveat that it was *not* "suggesting that plaintiff's proposed exception is necessarily valid in any circumstances." Rather, it was simply "defer[ring] the ultimate resolution."

the Pushkin were on loan to the Los Angeles County Museum of Art (see *IFAR Journal*, Vol. 6, nos. 1&2). In June 2000, he claimed Matisse's *Dance II* (1910), while it was in Italy on loan from the Hermitage. The painting was spirited back to Russia before a judge in Rome could hear the case. As early as 1954, the Shchukin family tried to reclaim some Picassos loaned by Russia to a Paris exhibit. The Russian government ordered the works back, and the French courts rejected the claim. Most recently, a Russian loan exhibition at the Royal Academy in London was almost cancelled when Konowaloff claimed ownership of some of the works. Cancellation was averted when the British Parliament passed legislation granting immunity from seizure.

THE NIGHT CAFÉ

Without doubt, one of van Gogh's most iconic paintings, *The Night Café* (in French, *Le Café de nuit*) was painted in September 1888, a few months after the artist left Paris for Arles in Provence, to establish his Studio of the South. The café, located on the ground floor of his little yellow house and managed by his landlord, was an all-night hangout for local prostitutes, drunks and other derelicts.

There are very few works which van Gogh described in more detail, or in which he invested more energy, than this painting, which he also executed in a watercolor version sent to his brother Theo. In a letter to Theo (dated September 8), van Gogh described how he stayed up "for three nights running" painting the scene, in which he "tried to express the terrible passions of humanity by means of red and green. . . . Everywhere there is a clash and contrast of the most alien reds and greens, in the figures of the little sleeping hooligans, in the empty dreary room . . ."

It is a scene of loneliness and despair, with exaggerated orthogonal lines pulling us deep into the painting. Many scholars, and van Gogh himself, have drawn parallels between his *Night Café* and his masterpiece from his early period, the *Potato Eaters* (1885). In both, central ceiling gas lamps, with halo-like circles surrounding the light source, capture the viewer's eye and anchor the scene. *The Night Café* is a mesmerizing and justifiably famous painting, and it is no wonder that Yale would like to keep it. When Gauguin came to Arles to join van Gogh in October of 1888, he also painted the *Night Café in Arles*, as a backdrop to his portrait of the landlady, Madame Ginoux. Ivan Morozov acquired the Gauguin painting, too, and it, too, was confiscated by the Bolsheviks. It now hangs in the Pushkin Museum in Moscow.

• • •

— S. F.

CLEVELAND MUSEUM RETURNS 14 WORKS TO ITALY

On July 2, 2009, fourteen objects — 13 antiquities **(FIG. 1)** and a 14th century Gothic processional cross **(FIG. 2)** — formerly in the collection of the Cleveland Museum were officially presented to the Italian public. Their return to Rome marked the end of two years of discussions and negotiations over their rightful ownership.

The museum and Italy signed an agreement last November for the return of the objects. In exchange, Italy will lend 13 similar antiquities to the museum for a renewable 25-year period.

The agreement follows the pattern negotiated by Italy with several other U.S. museums over the last few years, including the Metropolitan Museum of Art in New York, the Museum of Fine Arts, Boston, and the University Art Museum at Princeton. In each case, Italy's claim to the objects in the museums' collections was based on documentation – including photographs and letters found during a raid on a Geneva, Switzerland warehouse belonging to convicted antiquities dealer, Giacomo Medici (see related newsbrief this issue of *IFAR Journal*) — suggesting that the objects were acquired in contravention of Italy's patrimony and export laws.

FIGURE 1. ***Donkey-head Rhyton,*** **Greece, c. 475 B.C. Red-figure terracotta. One of 13 antiquities returned by the Cleveland Museum to Italy.**

Italy initially claimed more than 40 objects from Cleveland's collection. The number was narrowed down. A major stumbling block to settlement was the museum's insistence that two of the claimed objects — a bronze statue of *Apollo Sauroktonos* **(FIG. 3)**, believed to be by Praxitiles or his workshop, that the museum acquired with great fanfare in 2004, and a bronze chariot ornament of a winged victory (Victory with Cornucopia) — were legitimately theirs. The two objects are not part of the agreement. But Italy and the museum have created a committee to study them further.

Tests undertaken by the museum show that the Apollo was excavated more than 100 years ago, and, therefore, prior to the enact-

FIGURE 2. ***Processional Cross,*** **Italy, Tuscany. 14th century. Champlevé enamel and gilding on copper. Returned by the Cleveland Museum voluntarily after it was determined that the work had been stolen from a church.**

ment of Italy's 1939 patrimony law. There are gaps, however, in its provenance. In a press conference at the time of the agreement, Maurizio Fiorilli, the Italian lawyer who took part in the negotiations on behalf of Italy, said that if new tests revealed that the statue was excavated more recently, negotiations over the work might have to resume.

The Gothic processional cross, which the museum bought in 1977, was not part of the antiquities claim. Rather, it turned out to have been stolen from a little church near Sienna after World War II, and the museum voluntarily relinquished it.

— S. F.

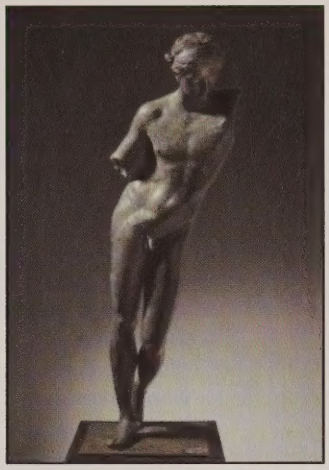

FIGURE 3. Attributed to Praxiteles. Greece, c. 350-275 BC; possibly 275 BC – AD 300. *Apollo Sauroktonos.* Bronze, copper and stone inlay. The Cleveland Museum of Art, The Severance and Greta Millikin Purchase Fund, 2004.30. Initially claimed by Italy, but not returned, pending further study.

MEDICI CONVICTION UPHELD BY ROME COURT

On July 15, an appeals court in Rome upheld the conviction of Giacomo Medici, the antiquities dealer who was convicted in December 2004 of conspiracy, smuggling and trafficking in stolen antiquities. Medici, who is now 71 years old, was originally sentenced to 10 years in prison and fined 10 million Euros. The appeals court reduced the sentence to 8 years. Medici has been out of prison while on appeal.

Medici (who is not related to the Renaissance Medici's) has announced that he will appeal again, and will take his case to Italy's highest court.

In 1995, Italian Carabinieri and Swiss police raided Medici's warehouse in the Freeport of Geneva, Switzerland. They found thousands of documents — including Polaroids showing antiquities bearing evidence suggesting that they were newly dug from the ground. These have formed the basis of ownership claims made by Italy against several museums in the United States, including the Cleveland Museum (see news story in this issue of *IFAR Journal*), the Metropolitan Museum, the Getty, the MFA Boston, Princeton, and others.

The evidence found in Medici's warehouse has also been used in the case against Marion True, the former Getty Museum antiquities curator, and Robert Hecht, a Paris-based American antiquities dealer, who are currently on trial in criminal court in Rome for conspiracy to acquire antiquities in violation of Italy's patrimony and export laws. Civil charges against True were dropped after the Getty Museum signed an agreement with Italy to return 40 of the objects Italy claimed. Medici was originally going to be tried together with True and Hecht, but he opted for an expedited trial under rules allowing for reduced sentences in exchange for speedier procedures.

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COLLECTOR WHO LOST BATTLE FOR *RED ELVIS* SUES HER ATTORNEYS

In the 2007 case of *Lindholm v. Brant*,[1] the Supreme Court of Connecticut ruled in favor of the innocent buyer — collector Peter Brant — who purchased Andy Warhol's *Red Elvis* **(FIG. 1)** from a corrupt dealer who had swindled it from its owner, Swedish heiress Kerstin Lindholm. Now, in a recent twist, Lindholm is suing her attorneys at Proskauer Rose LLP for malpractice and allegedly overcharging her for services rendered in connection with the dispute.

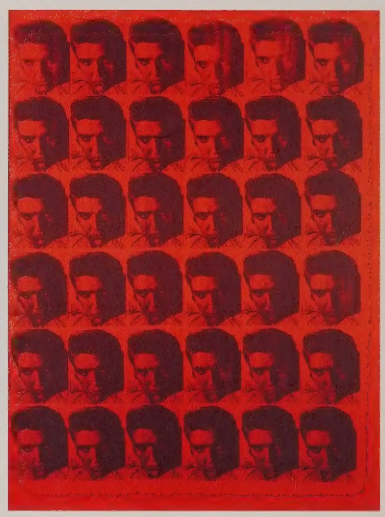

FIGURE 1. ANDY WARHOL, ***Red Elvis*, 1962. Synthetic polymer paint and silkscreen ink on canvas, 69" x 52". Coll. Peter Brant; formerly coll. Kerstin Lindholm. © The Andy Warhol Foundation for the Visual Arts / ARS, NY. © EPE, Inc. Photo: The Andy Warhol Foundation for the Visual Arts / Art Resource, NY.**

Lindholm alleges that her attorneys failed to pursue certain claims and made other strategic errors amounting to malpractice.

In an action filed in April in Connecticut Superior Court,[2] Lindholm alleges that her attorneys failed to pursue certain claims and made other strategic errors amounting to malpractice. In support of her claim of overbilling, she included with her court papers an undated, handwritten internal Proskauer memorandum on the firm's letterhead, in which an associate made notations — apparently regarding Lindholm — such as "rates are quite high"; "may suggest double billing for same work"; "billing paralegal work at attorney rates"; and "overall excessive handling of every item in the case." Proskauer has called Lindholm's allegations "entirely without merit." Indeed, given that, during the representation, Proskauer acceded to several requests by Lindholm to decrease its bills — reportedly cutting the hourly rates it charged Lindholm by as much as 75 percent — the context in which the handwritten note was made will no doubt be an issue.

LINDHOLM V. BRANT

The decision against Lindholm in her ownership dispute with Brant was a wake-up call to art owners who place blind faith in dealers with whom they have long-standing relationships. In the United States, under the uniform commercial codes that govern many art transactions, the ownership rights of a good faith purchaser — even of a work of art sold without the owner's consent — will often trump those of the original owner. This is particularly the case where, as here, the original owner entrusted the work to a dealer who appeared, at least from the buyer's point of view, to have the authority to sell it.

Lindholm, who resides in Connecticut, was, by all accounts, the victim of a high-stakes international scheme in which her trusted Swedish art dealer, Anders Malmberg, secretly arranged an unauthorized sale of *Red Elvis* to Peter Brant, a well-known Warhol collector and publisher of *Art in America*. Malmberg concealed the sale from Lindholm and pocketed

[1] *Lindholm v. Brant*, No. X05CV020189393, 2005 Conn. Super. Lexis 2366 (Conn. Super. Aug. 29, 2005), *aff'd.*, 283 Conn. 65 (2007).

[2] *Lindholm v. Proskauer Rose LLP*, No. FST-CV09-5011095-S (Conn. Sup. Ct. filed April 9, 2009).

the proceeds for himself. For his part, Brant had no idea that Malmberg's dealings with him were dishonest.

Brant first encountered Malmberg in 1996 when Brant, a Board member of the Guggenheim Museum, was helping the museum to locate and obtain permission to include *Red Elvis* — a large painting with 36 silk-screened images of the rock star — in an upcoming international exhibition of Warhol's works. Brant was aware that *Red Elvis* was owned by a private collector represented by Malmberg, and approached Malmberg through another Swedish dealer Brant knew. Through Malmberg, Lindholm gave her permission for *Red Elvis* to be included in the Guggenheim exhibition.

Shortly thereafter, Malmberg informed Brant — falsely — that Lindholm had sold *Red Elvis* to him, and asked if Brant would be interested in buying the painting. In fact, Malmberg had not purchased the painting, nor did he have Lindholm's permission to sell it. Because, however, Malmberg was well-known in the art world and had an excellent reputation, Brant did not suspect that Malmberg was attempting to perpetrate a fraud.

Brant expressed interest in buying *Red Elvis* from Malmberg. He was concerned, however, that, because Lindholm and her husband were going through a contentious divorce, her husband might try to dispute any sale by Lindholm to Malmberg. Thus, rather than rely on the industry practice of simply obtaining a bill of sale, Brant retained counsel to negotiate a formal contract with Malmberg. In the contract, Malmberg represented that he had title to *Red Elvis*. Brant's lawyer also researched any claim that Lindholm's husband might have had to the painting, conducting a UCC lien search and an Art Loss Register search — both of which were negative. Brant's attorney also asked Malmberg to provide a copy of the invoice from Lindholm to Malmberg. Malmberg declined, saying that such invoices are not customarily disclosed.

Meanwhile, Malmberg needed to devise a way to get custody of the painting so that he could sell it to Brant. Accordingly, Malmberg convinced Lindholm to instruct the Guggenheim to release *Red Elvis* to him at the close of the Warhol show, under the pretext that he was going to arrange to have the painting exhibited at a Copenhagen museum. When Brant learned that the Guggenheim had released the painting to Malmberg, he took it as a confirmation that Malmberg was the new owner.

In April of 2000, Brant purchased *Red Elvis* from Malmberg for $2.9 million and, consistent with his belief that the sale was legitimate, Brant allowed the painting to be included in a traveling exhibition. When Lindholm read in a magazine article that Brant had purchased the painting, she sued Brant, also a Connecticut resident, in Connecticut state court, asserting claims for conversion, replevin, conspiracy to commit fraud, statutory theft and violation of the Connecticut Unfair Trade Practices Act. Authorities in Sweden also brought criminal charges against Malmberg. In those proceedings, Malmberg was convicted, sentenced to a three-year prison term, and ordered to pay Lindholm $4.6 million in restitution.

The Connecticut case was presented in a bench trial before Superior Court Judge Chase T. Rogers (now Chief Justice of the Supreme Court of Connecticut). Justice (then-Judge) Rogers found that when Lindholm gave the Guggenheim permission to release *Red Elvis* to Malmberg, an entrustment was created — meaning that a sale by Malmberg, as an art dealer, would result in the transfer of *Red Elvis*'s ownership to a buyer "in the ordinary course," regardless

"The decision against Lindholm . . . was a wake-up call to art owners who place blind faith in dealers with whom they have long-standing relationships."

of whether Malmberg actually had permission to sell the painting.[3]

The court went on to find that Brant was a "buyer in the ordinary course" under Section 1-201 (9) of the Uniform Commercial Code (codified in Connecticut as Conn. Gen. Stat. §42a-1-201(9)). Under that Section, a "buyer in the ordinary course" is defined as "a person that buys in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person . . . in the business of selling goods of that kind." To buy in good faith means to deal with "honesty in fact and the observance of reasonable commercial standards of fair dealing" in the trade.[4] In addition, where the buyer is himself considered a merchant,[5] he must meet heightened good faith standards. Specifically, if any questions or doubts are raised in the merchant's mind about the seller's authority to sell, he is required to seek "further verification" before consummating the transaction.

Because Brant is a knowledgeable collector who owns a company, Twentieth Century, that buys and sells art, including art by Warhol, the court found that he was a merchant, and was thus required to meet the heightened good faith standard. The court went on to reason, however, that because the "vast majority of art transactions — worth millions of dollars — are completed on a handshake and an exchange of an invoice," Brant's "unusual steps of retaining counsel, authorizing counsel to engage in due diligence and insisting on formal contracts in addition to an invoice" were sufficient to make him a buyer in the ordinary course, even under the heightened merchant standard.

The court rejected Lindholm's argument that Brant should have insisted on seeing an invoice from Lindholm to Malmberg as asking for an "extraordinary measure," far beyond industry norms. It also found meritless Lindholm's position that Brant should have contacted her — and not Malmberg — about the sale. The court pointed out that experts for both sides testified that "in art transactions, it is inappropriate for a buyer to contact the seller directly if the seller is represented by an art dealer."

Lindholm appealed, and in July 2007, the Supreme Court of Connecticut affirmed.[6] It held that while there may be instances in which a mere handshake and an invoice would not be sufficient to confer status as a buyer in the ordinary course, in this case, Brant's efforts to satisfy his concerns about the sale of the painting were "extraordinary." The Supreme Court went on to agree with the trial court that it would be inappropriate to impose a requirement that a buyer obtain documentary proof of ownership from the seller, particularly because such a requirement would "destroy the privacy and confidentiality that buyers and sellers have come to desire and expect."

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[3] UCC § 2-403 (2). Section 2-403 (3) of the Uniform Commercial Code defines "entrusting" as "any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law." (These provisions are codified at Conn. Gen. Stat. § 42a-2-403(2) and (3).)

[4] UCC § 1-201 (20) (codified at Conn. Gen. Stat. § 42a-1-201 (20)).

[5] Under the UCC, a merchant is defined as "a person that deals in goods of the kind or otherwise holds itself out by occupation as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom the knowledge or skill may be attributed by the person's employment of an agent or broker or other intermediary that holds itself out by occupation as having the knowledge or skill." UCC § 2-104(1) (codified at Conn. Gen. Stat. § 42a-2-104 (1)).

[6] 283 Conn. 65 (2007).

NEW LAWSUIT AGAINST ATTORNEYS

In April of 2009, Lindholm sued her lawyers. With respect to her claim of malpractice, she asserts that Proskauer should have pursued a claim against the Guggenheim, which according to Lindholm, should have notified her when Brant allegedly, and mistakenly, told the museum that Malmberg was the new owner of *Red Elvis*. If the Guggenheim had done so, claims Lindholm, she never would have authorized the museum to release the painting. Lindholm also asserts that Proskauer waived her right to a jury trial against her wishes, allegedly because she was not at that time paying her legal bills and the firm wanted to end the case quickly.

With respect to the mysterious handwritten note and Lindholm's claim that she was overbilled, Lindholm asserts that Proskauer estimated, when she retained the firm, that her case would cost between $300,000 and $350,000. Ultimately, however, her legal bills climbed to $2.8 million, which Lindholm alleges were artificially inflated due to practices purportedly described in the handwritten note. Ultimately, Proskauer cut its bill to $1.4 million, of which Lindholm has paid a little over $1 million. She now wants the firm to return $850,000 of those payments to her — thus essentially bringing her legal costs down to the amount of the original estimate.

Proskauer has yet to respond formally to Lindholm's charges, but it no doubt will vigorously defend itself against the lawsuit.

MARY MORABITO ROSEWATER
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A NEW HOLBEIN ERASMUS PORTRAIT?

From Paris Auction to Rotterdam Exhibition

MARCO GRASSI*

Paris always rewards visitors handsomely in any season and the fall of 2000 was no exception. I felt particularly fortunate that year, during a beautiful September fortnight, to have been there. By chance, also in Paris, was an old friend, a collector for whom I had occasionally provided conservation and consultation services. No sooner had we crossed paths that I was on my way to Hôtel Drouot to examine an item that he had previously spotted in an upcoming sale. As anyone who has visited that fabled Paris auction emporium knows, Drouot is a remarkable institution: a cavernous, multi-tiered warren of sales rooms where viewing often lasts less than twenty-four hours and masterworks change hands cheek-to-jowl with stacks of chipped crockery, threadbare sofas and all manner of carved and painted grotesqueries.

"Since the mid-sixteenth century, Erasmus' gaunt face had been rendered universally famous by four, possibly five exceptional portraits executed from life by the great Hans Holbein the Younger . . ."

Lurking in a dusty glass case with other bits and pieces, my friend pointed to a small rectangular painting on panel instantly recognizable as a likeness, in three-quarter profile, of the celebrated Renaissance humanist Erasmus of Rotterdam (1466 – 1536). Since the mid-sixteenth century, his gaunt face had been rendered universally famous by four, possibly five, exceptional portraits executed from life by the great Hans Holbein the Younger (c.1497 – 1543)— seminal images that were subsequently to spawn countless contemporary and later copies, variants and adaptations.

FIGURE 1. HANS HOLBEIN? *Portrait of Erasmus* **as it appeared in 2000, after removal of varnish and in-paintings and before major restoration. c. 1530? Oil on panel, 35.4 x 26.5 cm. Private Collection, Zurich. Photo: Courtesy M. Grassi**

The little portrait seemed intriguing and probably of the period, so I urged my friend to purchase it at the sale the following day.[1] It was a typical event where hundreds of items rapidly pass under the hammer un-catalogued, summarily described and only rarely rising in price beyond their modest estimates. This lot was no exception (it was knocked down to my friend for about 2,000 Euros); after all it was, by any reckoning, yet another copy of the ultra-famous Holbein prototype. Or so it seemed at first glance. A more careful second look, however, revealed one important fact: none of the recognized original portraits, nor any of the copies, for that matter, showed the sitter's hands in precisely the same attitude — grasping a closed book. What also seemed interesting was that, apart from some scattered and minor losses due to past shrinkage of the panel, the painted surface was virtually intact.

* Marco Grassi is a private paintings conservator in New York. He is also a member of IFAR's Art Advisory Council.

1 Drouot-Richelieu, Paris, 27 September 2000, uncatalogued.

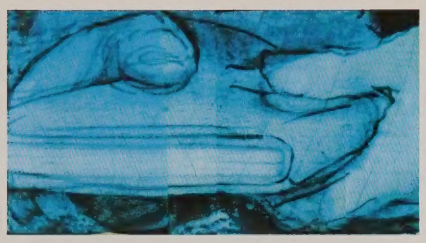

FIGURE 2. Infra-red image showing a detail of the hands. Photo: Courtesy M. Grassi

It was decided then and there that the painting should be sent to my studio in New York to undergo conservation treatment and more detailed study. As it turned out, it was the beginning of a more than eight-year project that would involve laboratory tests on two continents, exhaustive archival research and the input of several of the world's foremost specialists in Northern Renaissance painting.

As a preface to any further procedure, the painted surface required careful consolidation to prevent further losses. A somewhat darkened and opaque older varnish could then be safely removed — both were perfectly routine procedures **(FIG. 1)**. Once on the studio work-table, however, it became clear that, unlike the preliminary treatment, the painting itself was anything but routine: the exceptional quality and delicacy of the modeling, the meticulous detailing and the lustrous finish all spoke clearly of the great diligence and proficiency of its creator, whoever he might have been.

> ". . . none of the recognized original portraits, nor any of the copies, for that matter, showed the sitter's hands in precisely the same attitude . . ."

More in-depth diagnostic tests followed...and, with them, the first truly heart-stopping moments of revelation. Using a well-established technique, inspection with an IR (infra-red) 'vidicon' camera, allows the operator to detect features below the painted surface not generally visible in normal daylight or incandescent light. Images appeared on the IR monitor that were truly astonishing: there, in the area of the hands, was stunning evidence of vigorous and uninhibited preparatory drawing **(FIG. 2)** — the artist clearly working out the complex problems of perspective and anatomy. By contrast, the rest of the composition showed no trace of similar experimentation, save for some summary lines indicating the position of the cloak's fur lining **(FIG. 3)**. But there was yet one more surprise: the shape of the sitter's cap. Here, the X-ray radiograph revealed that the artist had added the flaps now covering the ears, altering a 'first draft' that showed the cap without them; possibly a concession to the sitter, famously averse to the cold **(FIG. 4)**.

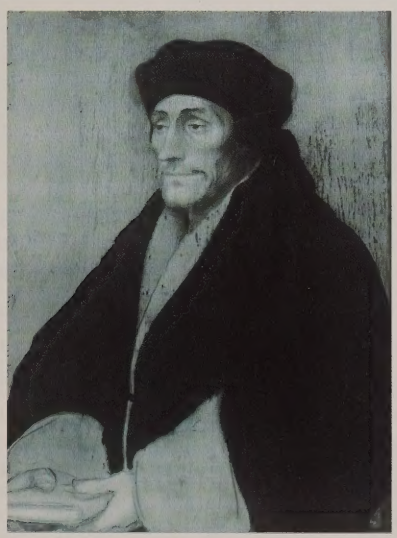

FIGURE 3. Infra-red of the full figure. Photo: Boijmans Museum, Rotterdam.

FIGURE 4. X-ray radiograph of the portrait. Photo: Boijmans Museum, Rotterdam.

"Images appeared on the IR monitor that were truly astonishing: there, in the area of the hands, was stunning evidence of vigorous and uninhibited preparatory drawing . . ."

These findings pointed in one, obvious, direction. It was highly unlikely that the portrait could be a copy; not only was an exact prototype unknown, but copyists invariably follow the model line-by-line without improvisation or change. Clearly, the time had come to complete the in-painting and to progress to a broader investigation as to the painting's provenance, style and, most importantly, its iconography. Regarding this last, it is well known that four, possibly five, images of Erasmus, incontestably executed by Hans Holbein, have survived; two in full profile and three in three-quarter profile. They are:

- *Erasmus in Profile.* **(FIG. 5)** Paris, Musée du Louvre. Oil on panel, 43x33 cm. The sitter is shown writing, against a dark patterned background. Painted c. 1523 and sent to England to Sir Adam Newton.
- *Erasmus in Profile.* **(FIG. 6)** Kunstmuseum, Basel. Oil on paper, mounted on panel, 37x30.5 cm. A variant, except for the patterned background, of the Louvre painting. Painted c. 1523 and having belonged to Bonifacius Amerbach, a friend of Erasmus.
- *Erasmus in Three-Quarter Profile.* **(FIG. 7)** Longford Castle, Earl of Radnor (on long-term loan to the National Gallery, London). Signed and dated 1523. Oil on panel, 76x51 cm. The sitter is shown in an interior with architectural elements, books on a shelf, and a dark green curtain. Sent to England to William Warham.
- *Erasmus in Three-Quarter Profile.* **(FIG. 8)** Kunstmuseum, Basel. Painted c. 1532 for Bonifacius Amerbach. Oil on circular panel. Diam. 10cm. Only the head is shown on a dark background.
- *Erasmus in Three-Quarter Profile.* **(FIG. 9)** New York, Metropolitan Museum (Lehman Collection). Painted c. 1530. Oil on panel, 18.7x14.5 cm. The folded hands are only partially visible. This version has frequently, though not unanimously, been ascribed to Holbein.

The portrait that reappeared at Drouot in Paris bore a clear relationship to two mentioned above (the Basel roundel and the Metropolitan portrait), both painted c. 1530. (The Longford Castle portrait, painted in 1523, while showing the head in a similar position, portrays a considerably younger sitter). The measurements of the 'Drouot' picture (35.4x26.5 cm), however, differ from all the other known variants. But one fact is common to all these paintings: they must have been executed, probably in Switzerland, when both Erasmus and Holbein were there at the same time.

Earlier in my career, I collaborated with a very talented and perceptive Swiss conservator at the famed Thyssen-Bornemisza Collection when it was still housed at the Villa Favorita in Castagnola, Switzerland. In 1991, when the collection found a new home in Madrid, my colleague Emil Bosshard returned to private practice in the northern Swiss canton of Thurgau. It was felt that Emil would be the most appropriate professional to continue research on the 'new' Erasmus portrait in view of his long experience with earlier German Renaissance painting. By now, it was clear that an attribution to Holbein himself could not be ruled out.

"X-ray radiograph revealed that the artist had added the flaps now covering the ears, altering a 'first draft' that showed the cap without them . . ."

In due course, Emil arranged to have the portrait examined by the art-historian Pascal Griener, a professor at the University of Neuchâtel and author of numerous publications on Hans Holbein. Prof. Griener was to be the first scholar to firmly attribute the painting to the great German artist. Perceptively, however, he noted what appeared to be an odd inconsistency in the execution of the painting: that the smooth and crystalline figure contrasted uncharacteristically with the rather thick and opaque green background. This prompted Emil to submit pigment samples to Dr. Hermann Kühn of Munich, a noted conservation scientist, formerly of the Doerner Institute. The results of this testing showed unequivocally that the

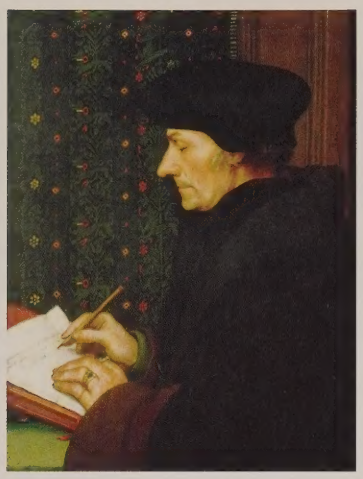

FIGURE 5. HANS HOLBEIN, *Portrait of Erasmus,* **c. 1523. Oil on panel, 43 x 33 cm. Musée du Louvre, Paris. Photo: Erich Lessing / Art Resource, NY.**

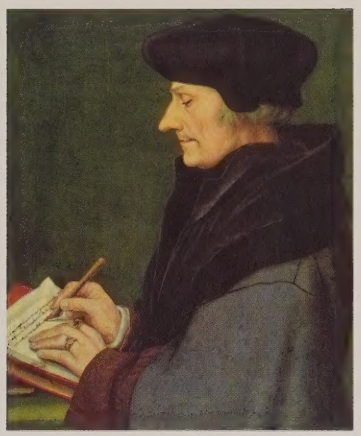

FIGURE 6. HANS HOLBEIN, *Portrait of Erasmus at his writing desk,* **c. 1523. Oil on paper, mounted on panel. 37 x 30.5 cm. Kunstmuseum, Basel, Switzerland, Inv. 319. Photo: Bildarchiv Preussischer Kulturbesitz / Art Resource, NY.**

FIGURE 7. HANS HOLBEIN, *Portrait of Erasmus,* **1523. Oil on panel, 76 x 51 cm. © The National Gallery, London/Private owner.**

FIGURE 8. HANS HOLBEIN, *Portrait of Erasmus,* **c.1532. Oil on circular panel, diam. 10 cm. Kunstmuseum, Basel, Switzerland, Inv. 324. Photo: Leif Geiges, Bildarchiv Preussischer Kulturbesitz / Art Resource, NY.**

FIGURE 9. HANS HOLBEIN, *Portrait of Erasmus,* **c. 1530. Oil on panel, 18.7 x 14.5 cm. The Metropolitan Museum of Art, New York. Robert Lehman Collection, 1975 (1975.1.138). Photo ©The Metropolitan Museum of Art / Art Resource, NY. This version has frequently, though not unanimously, been ascribed to Holbein.**

background had been entirely re-painted, but, as the cross-section microphotographs confirmed **(FIG. 10)**, the unfortunate intervention must have occurred very early in the painting's life. The newer layer had aged contemporaneously with the original background forming a strong bond between the two.

Significantly, the wood of the panel proved to be a variety of European linden; what one might expect of a painting executed in the area of Switzerland or Southern Germany, as opposed to the oak favored by painters in England and the Low Lands, or the poplar so common in Italian panel painting.

Perhaps also significantly, the left edge of the portrait showed traces of a reinforcement to the panel, suggesting that the painting might have originally been attached to a similar painting on its left, forming a diptych. Such pairings, of course, are not unknown in Renaissance art; the most obvious parallel in this instance being the diptych double-portrait of Erasmus and Peter Ägidius by Quentyn Matsys (now divided between Rome, Galleria Corsini and Longford Castle, Lord Radnor). Had the 'Drouot' painting been so conceived, Erasmus' gesture 'offering' the book would have been perfectly consistent with the opposite sitter 'receiving' it. Pure conjecture, but fascinating nonetheless.

Meanwhile, a great deal was being learned about the portrait's provenance. The auction in which the painting was sold comprised the property of an unusually distinguished owner, the Princess Marie-Louise de Robech who had died in 1997. She was the widow of Emmanuel de Levis-Mirepoix, Prince de Robech whose family seat was the Château de Malsherbes. Notably, the Malsherbes family was the last surviving branch of one of France's most prominent *ancien-régime* judicial dynasties; the Lamoignon. Chrétien Guillaume de Lamoignon de Malsherbes (1721-1794) was twice a minister under King Louis XVI and argued the king's defense at his trial. Both were beheaded. The Lamoignon had been jurists and parliamentarians for generations, tracing their ascent to the early seventeenth century. A most intriguing connection was the marriage, in 1674, of Chrétien François de Lamoignon to a certain Marie-Jeanne Voisin, Dame de Cerisay. She was a direct descendant of none other than Jean de Dinteville (1504-1557), one of the two gentlemen portrayed in Holbein's famous *Ambassadors*, now in the National Gallery, London.

"It was highly unlikely that the portrait could be a copy; not only was an exact prototype unknown, but copyists invariably follow the model line-by-line without improvisation or change."

Naturally, these findings prompted Prof. Griener to undertake a scrupulous and lengthy search through a number of French archives in the hope of finding even a fleeting reference to the Erasmus portrait, possibly in a long-forgotten will or inventory. Unfortunately, the trail went cold almost immediately before the last owner. The sad reality is that one of the legacies of the French Revolution is the fragmentary nature of the surviving archival material. One thing, at least, was clear: the portrait had for generations and, possibly for centuries, been the property of a noble and influential family.

"The wood of the panel proved to be a variety of European linden; what one might expect of a painting executed in the area of Switzerland or Southern Germany . . ."

One major problem remained: removal of the dark-green over-paint in the background, a task which Emil and I discussed for months. He felt that the procedure simply posed too many technical difficulties. It was obvious from the color cross-sections that the original was also green. Was the retrieval of a similar, uniformly colored first layer, Emil justifiably argued, worth the risk of damaging it? He prudently declined to even try. And so the painting returned to New York.

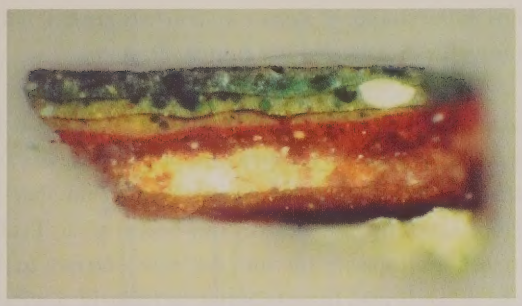

FIGURE 10. Cross-section microphotograph showing layers of paint. Photo: Courtesy M. Grassi

Extensive testing followed, in an attempt to develop a technique allowing for a safe and efficient removal of the over-paint layer. Finally, a solvent solution was devised which slowly softened and swelled that layer. It was applied progressively in tiny amounts over equally tiny quadrants of the surface, eventually allowing the over-paint to be removed with a sharp scalpel — all these operations, naturally, were performed with the aid of a high-magnification binocular microscope. Very slowly and painstakingly, the original green background reappeared, and in remarkably good state **(FIG. 11)**. With it, the portrait regained the brilliance and resonance it had lost for so long. Could this 'cleaning' be considered a faultless operation? The answer is that, alas, *no* conservation procedure is without its inevitable compromises. The difficult undertaking did, nonetheless, resolve another puzzling question: why would the over-painting have been necessary in the first place? That answer may lie in the damage along the left edge where the companion of the presumed diptych might have been attached. If the two paintings were carelessly separated early on, a quick, total re-paint would have been, by the standards of the day, the easiest solution.

The restored painting allowed a clearer assessment of its qualities and, ultimately, its authorship. Proof of this came soon enough when Dr. Jochen Sander, a curator at Frankfurt's Staedel Museum, who has also published on Holbein, informed us that an exhibition on Erasmus was in preparation at the Boijmans Museum in Rotterdam, the humanist's birthplace.

"Very slowly and painstakingly, the original green background reappeared, and in remarkably good state."

Not surprisingly, the curator of that exhibition, Dr. Peter van der Coelen, was eager to examine the portrait so as to decide what place, if any, it might occupy in the show. It was sent for observation to Rotterdam in January 2008, and later in the spring was formally requested for inclusion in the exhibition *Images of Erasmus* (November 8, 2008 – February 8, 2009). The ambitious undertaking, celebrating Rotterdam's most famous citizen, brought together an impressive body of material, both visual and textual, illustrating the historical, political and intellectual context in which the great humanist played such a significant role. The Matsys double portrait, mentioned above and reunited for this occasion, was just one of the many key works which were displayed.

But the singular attraction was the display in the same room, and for the first time together, three of the fundamental images of Erasmus that have come down to us: the Metropolitan's miniature in three-quarter view **(FIG. 9)** and another miniature (18.2 x 14.5 cm), also three-quarter view, from Basel, generally considered workshop. The Louvre generously lent its remarkable large profile portrait **(FIG. 5)**, which, fittingly, occupied pride of place on the main axis of the room. Regrettable 'absentees' were the Basel 'roundel' **(FIG. 8)**, the Basel rectangular portrait on paper **(FIG. 6)**, and the magnificent 'Radnor portrait' of 1523, which could not be lent **(FIG. 7)**.

Dr. van der Coelen found place for the 'new' portrait in this august company, hanging it in close proximity to the three other Erasmus portraits in the exhibition. He cautiously but with conviction attributed the painting to Holbein in the catalogue text with a proposed dating of ca. 1530.[2] It did not escape notice, however, that, in the newly discovered portrait the famous sitter appears older and more haggard than in the other, similarly

[2] Peter van der Coelen, *Images of Erasmus*, exhibition catalogue, Museum Boijmans Van Beuningen, Rotterdam, 2008, p. 67.

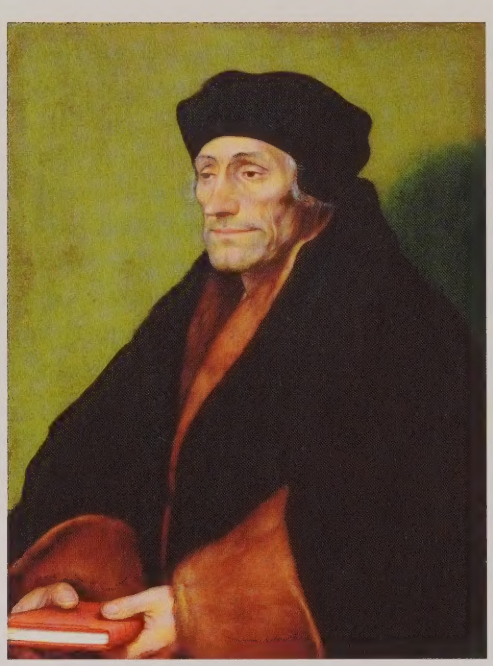

FIGURE 11. HANS HOLBEIN, *Portrait of Erasmus,* **in 2009, after restoration. Private Collection, Zurich. Photo: Courtesy M. Grassi.**

dated, images (Basel and New York). If this were, in fact, the case, the new portrait would be the last known likeness of Erasmus by Holbein to have survived. At all events, the exhibition offered a remarkable opportunity for direct comparison of the painting with the other established examples of this subject.

"Time and continued exposure of the painting will determine its future status in the critical literature."

As in other instances when additions have been proposed to the established *oeuvre* of an important artist of the past, debate arises and consensus is rare. The 'new arrival' often challenges aspects of dating and style which prevailing art criticism has long considered settled. In fact, the exhibition in Rotterdam raised a number of issues concerning the newly discovered portrait which will continue to be discussed in the future. For instance, Dr. Stephan Kemperdick of the Berlin Gemäldegalerie, has mentioned the possible collaboration of an assistant in this and perhaps other works by Holbein, pointing out that such collaborations in the studios of Renaissance artists are still not thoroughly investigated nor fully understood.

A day-long symposium organized by Dr. van der Coelen at the museum on January 23rd of this year, was an occasion for the presentation of papers on a number of topics relating to Erasmus. Only one, given by Prof. Griener, dealt specifically with the 'new' portrait. In it, he re-confirmed the attribution to Holbein, adding observations about the painting's unusual iconography; in particular, the sitter's explicit gesture of presenting the book — alluding to a possible publication dedicated to a new patron? Naturally, time and continued exposure of the painting will determine its future status in the critical literature. For now, the owner has consented to prolong the loan to the Boijmans Museum.

For this writer, seeing the Erasmus portrait in the exhibition was, naturally, a source of great pride and satisfaction. This was tempered only by not being able to share the exciting moment with my friend and colleague Emil Bosshard who had collaborated so thoughtfully and effectively in the long process of research and authentication. Sadly, at the beginning of last year, he succumbed to leukemia. A consummate conservation professional, Emil has left a considerable legacy of publications and other contributions to the field, and is remembered fondly by all who had been privileged to work with him.

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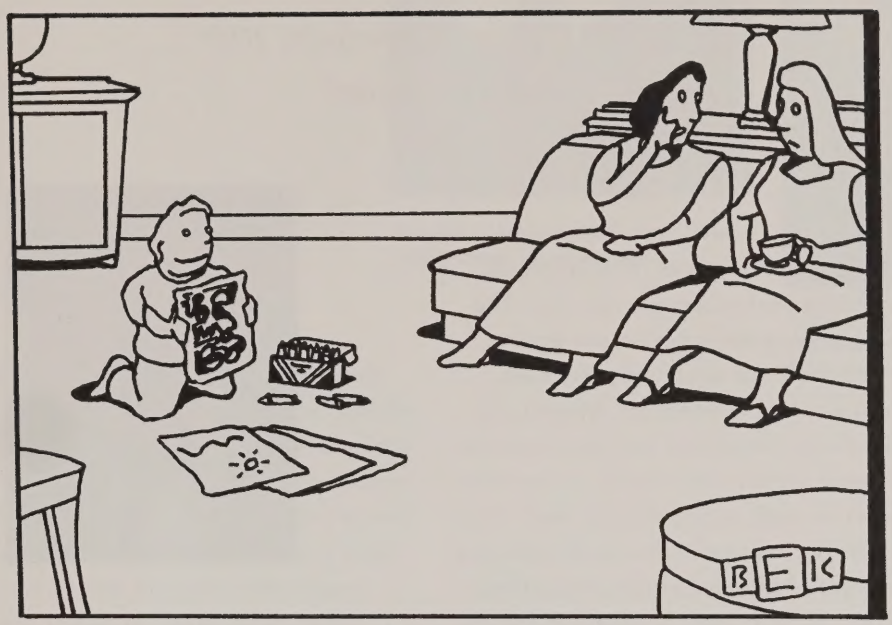

"I don't have the heart to tell him what's going on with today's art market."

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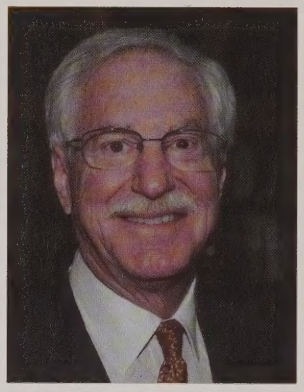
CAMBODIA—ANGKOR AND BEYOND: THE RAVAGES OF TIME, WAR, AND LOOTING

An *IFAR Evening*, March 26, 2009

OLIVIER BERNIER*

EDITOR'S NOTE:

On March 26, 2009, IFAR hosted an IFAR Evening on Cambodia at the National Academy in New York. The speaker was the noted author, historian, and lecturer, Olivier Bernier, and the talk was lavishly illustrated. The following is an edited version of Mr. Bernier's talk, and the Q&A.



When in the first half of the 12th century King Suryavarman II looked around his realm, he had every reason to be pleased. The Khmer kingdom was the largest and most powerful in Southeast Asia, about twice the size of today's Cambodia. Its economy was

FIGURE 1. Temple complex, Angkor Wat, seen from a nearby hill. Ph. O. Bernier

booming; its agricultural base, that great engine of all pre-industrial societies, was more advanced than those of any of its neighbors. And perhaps more important from our point of view, the culture of the Khmer kingdom was rich, subtle, sophisticated, and in one word,

"It is no wonder that the [Khmer] king felt that he could embark on what was the largest architectural project anyone had ever seen in that part of the world, Angkor Wat."

dazzling. So it is no wonder that the king felt that he could embark on what was the largest architectural project anyone had ever seen in that part of the world, Angkor Wat **(FIG. 1)**. It is a project of immense size — a vast area surrounded by a wide moat, a temple which is a quarter of a kilometer to each side, so that to walk around the temple, you have to walk two-thirds of a mile, with another kilometer between the great adorned gatehouse and the temple itself. There are a number of buildings along the way about which we know nothing at all. That, unfortunately, is a sort of leitmotif once you start to look at Khmer sculpture and Khmer architecture. We don't know, and we keep not knowing, because this extraordinary civilization, which continued to flourish into the 15th century, has less information available about it than practically any relatively recent civilization. There are a number of reasons for this, all of which make it a most appropriate subject for an *IFAR Evening.*

* Olivier Bernier is Vice Chair of the Center for Khmer Studies, a nonprofit organization. He is also an historian, lecturer, and author of numerous books and articles. He is a frequent contributor to the *New York Times*. In 2006, he was awarded the title of Chevalier of the Order of Arts and Letters by the French government, and in 1984 he was chosen as a Literary Lion by the New York Public Library.

"... When Cambodia was a colony, it was perfectly legal to export any work of art ..."

FIGURE 2. Angkor Wat, Central Tower, mid distance. Ph. O. Bernier

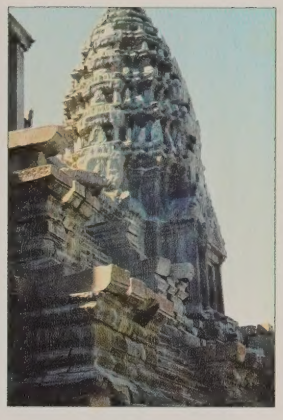


FIGURE 3. Central Tower, with Acroteria on the corners. Ph. O. Bernier

When the Siamese invaded the Khmer kingdom in 1431, they proceeded to destroy most of its accumulated knowledge, which was in the shape of metal plates. Whereas, in the West we used to keep information on books, and now on computers and disks, they kept all their information and most of their history on metal plates, which the Siamese promptly melted down. Imagine trying to write the history of the United States if every book published between 1776 and today vanished. We would be left with a few inscriptions on the front of buildings; and they wouldn't tell us very much. It is the same with the Khmer kingdom. We are left with a few stone-carved inscriptions in temples, which record how much the temple owned and how truly generous the king was, and not much else. Worse than that, after that first invasion in the 15th century, invasions continued straight through the end of the 19th century. Sometimes it was the Siamese, sometimes it was the Vietnamese. Thus, of course, more and more disappeared, and more was destroyed. Then came the 20th century, which had a heretofore unprecedented, undreamt of capacity for destruction. Most of the time when Cambodia was a colony, it was perfectly legal to export any work of art, and a great many were indeed sent out of the country. Then came the Khmer Rouge, and, following that, the fairly organized looting that took place after the return of peace in 1992. So the history of Cambodia is the history of one of the world's greatest cultures, about which we don't have nearly as much information as we should.

CAMBODIAN TEMPLES OF THE ANGKOR REGION

TEMPLE	DATE	RELIGION	BUILDER
Banteay Srei	967 A.D.	Hindu	Yajnavaraha (a courtier)
Angkor Wat *("City Temple")*	c.1113-1150 A.D.	Hindu, then Buddhist	King Suryavarman II
Angkor Thom	1186 A.D.	Buddhist	Jayavarman VII
Bayon	1186 A.D.	Buddhist	Jayavarman VII
Ta Prohm	1186 A.D.	Buddhist	Jayavarman VII
Banteay Chmar	late 12th-early 13th century	Buddhist	Jayavarman VII

FIGURE 4. Angkor Wat, Altar Gallery, with carvings. Ph. O. Bernier

FIGURE 5. Angkor Wat, Ladies of the Court relief showing damage from misguided cleaning with Clorox. Ph. O. Bernier

ANGKOR WAT

We know very little about King Suryavarman II, but we do know that he set out to build Angkor Wat. We know that he finished the building. We also know that of all the many reliefs inside Angkor Wat, only a little more than half, plus a quarter of one of the other sides, were carved under Suryavarman II, with the rest finished later. Still, when you come to Cambodia these days, what you see as you look from a distance is an extraordinary and vast temple. From a distance, when you can't see very much of the ravages of time, the great central tower still rears proudly above the others, and the four corner towers are still very much in place. So, from a distance, it seems as if all is well. Even as you get closer, it looks as if the building is the way it should be, with an extraordinary series of rising roofs **(FIGS. 2 AND 3)**. There are stairs, and a great porch — it is slightly damaged, but it is in place. From a distance you don't see how badly eroded some of the carvings are. And, of course, the great temple tower rises above it all. Inside the temple, all still seems to be there: the tower itself, the acroteria, a little worn, certainly, but still mostly in place.

Unlike many other temples in the successive Angkors — because the various kings built new temples and new capitals — Angkor Wat was occupied without any hiatus between the invasion of 1431 and the time when the French arrived in Cambodia and found a Buddhist monastery installed right in the temple. Thus, it was better maintained than the other temples. Still today, although we are no longer allowed to go to the upper level, we can see the galleries that surround the towers and the essential architecture of the temple. More astonishing, perhaps, we can also see the extraordinary scheme of the stone roofs of the temple — there are many kilometers of stone roofs. The roofs are a clear indication of how important the Indian influence remained very late in the Khmer culture. Because, without any doubt, much of the original culture came from India. The Khmer culture under the reign of Suryavarman II, when Ankor Wat was constructed, was, after all, a Hindu culture; it was a culture in which the religious and court language was Sanskrit. It was a culture which shared its gods with India, and also shared the Indian taste for retaining a form once you have come up with it, no matter what the material might be.

There is very little doubt that the early temples were made of wood and tiles. When the Angkor temples began to be made in stone, which is what we see in Figure 3, the tiles were simply copied in stone, which was then carved to look like tiles, and the little garudas and eagles are really spectacular. There is an eagle, who is the mount of the god Vishnu, at the edge of the tiles. When you stand high up in the temple, at a level to which visitors are no longer allowed to go, you see the extraordinary size of the successive galleries: the altar gallery **(FIG. 4)** with all the carvings, an inner gallery, then a second and third level, and the rising procession of the roofs.

Inside, we can still see a great many carvings, such as the Ladies of the Court of Suryavarman II, the king

FIGURE 6. Angkor Wat, King Suryavarman II on his Throne, with umbrellas indicating his rank and surrounded by ladies of the Court. Ph. O. Bernier

FIGURE 7. Angkor Wat, Apsaras, Celestial Dancers, dressed and coiffed. Ph. O. Bernier

who built the temple **(FIG. 5)**. This carving is especially appropriate for an IFAR discussion. When I first went to Cambodia in 1992, very few of the archaeologists had yet returned, but the Indian organization in charge of preserving Indian monuments, the Archaeological Survey of India, had sent a team of Indian archaeologists, who had hired local villagers from Siem Rep, and had handed them buckets filled with Clorox. They had also given them brushes with metal bristles. To my complete horror, I saw the villagers essentially rubbing away these reliefs. It was only through a joint campaign in the *New York Times* and the *Washington Post* that the Archaeological Survey of India was convinced to discontinue its activities. So, not only was Angkor Wat damaged, as all monuments are, by the passage of the centuries and the various invasions — although not so badly by invasions because, as a Buddhist temple, it earned a measure of respect from both the Vietnamese and Siamese — but it was also damaged by an extraordinarily misguided attempt at cleaning the lichen, which had begun to grow on the reliefs.

In this carving of the Ladies of the Court, the king himself is on his throne, and we see the legs and finials of the throne **(FIG. 6)**. To the best of my knowledge, there is no extant complete Khmer throne of the 12th century. So, this carving is it. This carving is also a wonderful way to know what really mattered in the Khmer kingdom. It shows the king himself larger than everybody else, and also a scribe writing down what the king has been saying. The king is surrounded by

"... a team of Indian archaeologists had hired local villagers from Siem Rep, and had handed them buckets filled with Clorox [and] ... brushes with metal bristles. To my complete horror, I saw the villagers essentially rubbing away these reliefs."

umbrellas. Umbrellas were the way to tell who was important and who wasn't, like the number of stars for generals in the army. The Khmers had three-umbrella generals, four-umbrella generals, five-umbrella generals. Kings had as many as eighteen umbrellas, as does King Suryavarman II in this carving.

Other reliefs, of course, have also survived. If you've been to Angkor Wat, the first thing you think about are the endless processions of graceful apsaras — celestial dancers — who are dressed and coiffed exactly the way the court ladies were **(FIG. 7)**. Every time I go to Angkor Wat and I see these ladies, I say to myself, "Ah yes, yes, 'Vogue' of about 1130." There they are, in the latest fashion, with elaborate pleats on their skirts, lavishly bejeweled anklets, jeweled belts, and very elaborate necklaces and equally elaborate tiaras. In fact, we know from the few texts that remain — letters

FIGURE 8 Angkor Wat. Four Celestial Ladies. Ph. O. Bernier

FIGURE 9. Angkor Wat. Battle of Lanka, relief. Detail showing a monkey fighting. Ph. O. Bernier.

FIGURE 10. Angkor Wat, Battle of Kurukshetra: General on his War Chariot. Ph. O. Bernier

of a visitor from China who came about 200 years later to Angkor Wat — that the ladies were extremely fond of the feathers of exotic birds. We see more feathers in this carving. So, although this is monochrome stone, we can imagine that the ladies' skirts were made of Chinese silks. We know they imported Chinese silks; we know they also thought that sewing was beneath contempt, so they imported seamstresses. No Khmer lady would for a moment consider putting thread to needle. At any rate, there they are in their splendid Chinese silks, their jewelry, and in those extraordinary hairdos, with tiaras.

These wonderful apsaras, these celestial dancers, are everywhere, with different expressions **(FIG. 8)**. Some are very pleased with themselves; we can see them thinking, "God, I look so wonderful today." Some of them are slightly disdainful, "You're not really quite good enough for me," and some are clearly having a very good time. Some are single, some are with friends, and some are shown fixing the elaborate structures on their heads. They carry flowers, and some wear large pendants. All of them provide a wonderful parade of fashion at court.

We are very lucky that all of this has survived. That in itself is almost miraculous, because while many of the sculptures are in the covered galleries around the base of the temple, there have been many infiltrations of water over the centuries, not to mention the fact that some of the galleries were lived in by the villagers at one point. Thus, in this detail **(FIG. 9)** of one of the monkeys fighting in the Battle of Lanka, the great battle at the end of the Hindu epic, *Ramayana,* the cracks in the stones are visible. But we can still see that our fierce monkey is looking very fierce and that several monkeys are rushing as quickly as possible toward the front. In a relief like this, we are able to see fully the extraordinary skill of these great carvers. The movement of the monkeys is absolutely extraordinary. What we see in this relief is a kind of ballet, a great battle, in which people are leaping back and forth, and as I believe is the case with great dancers, their movements go just that extra distance further to make the scene more dramatic, more convincing, and more wonderful to look at.

The same is true for the soldiers. **FIGURE 10** shows one of the war chariots. Note the wonderful movement of the horse, and the dance of the soldiers as they, too, move toward the front. So, all of that still exists, as does the general who, in this relief, is standing in the chariot with one leg on the back of the horse in front, while at the same time waving his sword and assaulting the enemy — an almost physically impossible position. But certainly it is as eloquent and as striking an image of a leader at war as is possible, and also as dazzling an image as we could expect.

These reliefs have survived, and so has another extraordinary relief, 125 meters long, showing the Churning of the Sea of Milk **(FIGS. 11-13)**. The legend behind this extraordinary relief of the Churning of the Sea of Milk is that there was a Sea of Milk at the beginning of the world. Everybody — the gods and the demons — understood that, provided you churned the

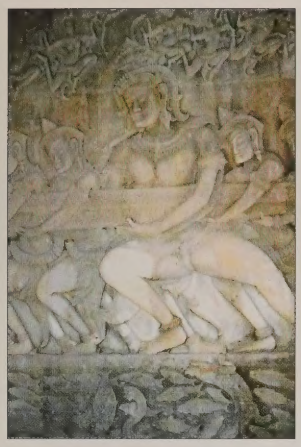


FIGURE 11. Angkor Wat, Churning of the Sea of Milk relief. Ph. O. Bernier

FIGURE 12. Angkor Wat, Churning of the Sea of Milk relief, showing vertical cracks caused by water infiltration. Ph. O. Bernier

FIGURE 13. Angkor Wat, Churning of the Sea of Milk relief. Detail showing central figure of Vishnu on Mount Meru. Ph. O. Bernier.

Sea of Milk long enough, you would find the elixir of immortality, amrita. The gods, however, realized that they couldn't do it alone, and the demons also realized that they couldn't do it alone, so after negotiations, the two agreed to work together. They churned and churned for thousands of years, and there were many quarrels: "You're not working as hard as I am." "What do you mean I'm not working as hard as you are? I'm working a lot harder." Eventually, the milk separated and the amrita came out. At that point the gods said "we'll take it," and the demons said, "What do you mean you'll take it? We're just as entitled to it as you are." This is when Vishnu took on one of his minor incarnations, as a young woman of extraordinary attractiveness, Mohini, and she proceeded to sashay in front of the demons, who very naturally looked at her really hard, and while they did, the gods snatched the elixir of immortality. This is why the gods are immortal and the demons are not.

In this great relief of the Churning of the Sea of Milk, we can see water damage where the stone has been eroded **(FIG. 12)**. The roof above the relief had begun to leak in recent years. The World Monuments Fund has been restoring the roof, taking it apart in sections and coating it with appropriate and invisible materials, and then putting it back in sections. So, for the predictable future at least, this extraordinary relief will not be damaged any more than it has been over the centuries.

Another detail of this relief **(FIG. 13)** shows Mount Meru, the place where the gods live, the pivot of the universe, with Vishnu himself standing right in the middle, and the gods on one side and the demons on the other.

KHMER BRONZES

These reliefs are in stone and still in place. But when Angkor Wat was young, there were also bronze sculptures, within the temple itself and almost certainly also around the various entrances. Today, not a single one of those bronze animal and figure sculptures remain in place because they were looted by the Siamese. The Siamese kept them until the end of the 18th century, when they were themselves invaded by the Burmese, who figured that what was good enough for the Siamese to loot was good enough for them. One extraordinary 12th Century Khmer bronze, the triple triple-headed elephant named Airavata, who is the mount of the god Indra, was looted and taken to a monastery in Mandalay **(FIG. 14)**. It stands with other looted Khmer bronzes in a little open building at the back of courtyard. These bronzes have the reputation of being a cure for stomach aches. Consequently, the people of Mandalay rub them. These 12th-century Khmer bronzes have not

FIGURES 14 AND 15. Khmer Bronze, Triple-headed Elephant, Airavata, now in Mandalay. Two views showing rubbed areas. Ph. O. Bernier.

been preserved at all. Exposed to the variations of the weather and worn down by the local people who rub them every time they have a stomach ache, they will not survive much longer.

Another view of the elephant **(FIG. 15)**, which I, myself, took four years ago, shows that this large — over five foot tall — bronze is not in very good condition. The point where the elephant is rubbed most — on the head — is shiny and is being worn away.

Another bronze, also being rubbed away and in poor condition, shows Shiva **(FIG. 16)**. For instance, the eyes, which must have been made of mother of pearl or shell, are missing, as are the mustache and eyebrows. The jewels for the third eye in the forehead are missing, and also the contents of the necklace and most of the arms. Nonetheless, this is one of the "almost" complete — even if the arms are mostly gone — Khmer figures of a god.

"Today, not a single one of those bronze animal and figure sculptures remain in place because they were looted by the Siamese."

These are the only large Khmer bronzes remaining, except that the museum at Phnom Penh has remnants of a vast sleeping Vishnu, but only a very small section of the sleeping Vishnu has survived. There are, of course, quite a number of *smaller* Khmer bronzes, such

"... the Burmese figured that what was good enough for the Siamese to loot was good enough for them."

as the naga or a serpent finial in **FIGURE 17.** This is the kind of finial that could be seen in the Khmer kingdom not only on the thrones of kings, or at the end of the litters that carried important people. They were everywhere, and quite a number of them remain. Some are in the museum in Phnom Penh, and a number of them are in western museums, because, as I said, it was legal to export them all. Many of these small bronzes were looted more recently and are circulating here, there, and everywhere, although less so today than ten years ago, when you could go to antique shops in Bangkok and easily find all the recently looted pieces. Many of them were looted by the general who was in charge of the army in the Siem Rep province. He used his army trucks and soldiers to move items across the border into Thailand. On one occasion his trucks broke into the reserve that the French archaeologists had established earlier in this century. The dispersed looted objects are almost impossible to trace because one naga finial looks very much like another naga finial. For most of them, we will never know whether they came out legally or were stolen; in short, exactly what their history was.

Many stone sculptures were stolen as well. In 1177 the Chams, a neighboring kingdom, invaded Angkor.

FIGURE 16. Khmer Bronze Shiva, shown missing his eyes, now in Mandalay. Ph. O. Bernier

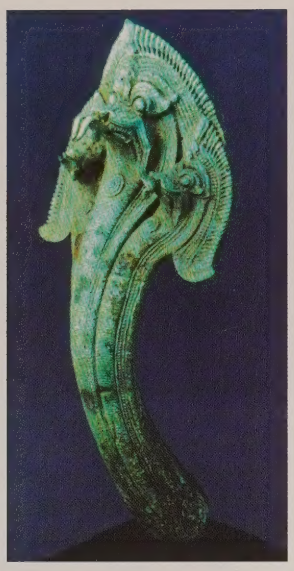


FIGURE 17. Small Khmer Bronze Finial of a Serpent. Ph. O. Bernier

They took the city, kept it for four years, and then in 1181, they were pushed out by another Khmer king, King Jayavarman VII. As so many kings had done before him, he built a new Angkor, Angkor Thom, with a new temple, the Bayon. He surrounded his new city with a moat with five causeways across the moat. He also built a number of monasteries, also with causeways, all of which have, on either side, reliefs showing the Churning of the Sea of Milk.

The heads of these gods and demons have now mostly been replaced by recent copies, which do not look much like the originals. Some of the originals were looted by the methods I have already described and they crossed the border. Who knows where they are now. As these heads were disappearing very rapidly, others were removed to the Conservation d'Angkor, the reserve in Siem Rep, where they still are. The net result of the combined looting and belated protection is that we now see mostly modern replacements, which are not as good as the originals.

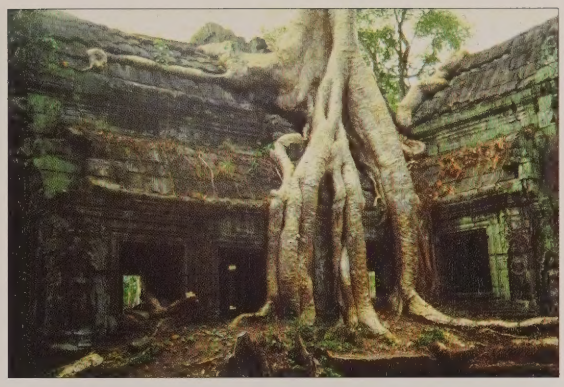


FIGURE 18. Ta Prohm, submerged under tree growth. Ph. O. Bernier

There is also destruction of another kind. When the French archaeologists arrived at the end of the nineteenth century, they found many of the temples — such as Ta Prohm **(FIG. 18)** — submerged under great trees which, in their growth, destroyed a number of buildings and reliefs. They left one monastery more or less as it was when they found it, so that we would remember. But they cleared the others and raised a great deal of what had fallen.

BANTEAY SREI

In one case, however, the series of very small temples at Banteay Srei **(FIG. 19)**, which was built at the end of the tenth century and has the most refined, imaginative, and beautiful reliefs in all of Angkor, it is only through the efficiency of the French colonial police that we are still able to see it. Because whereas the general in charge of the army in Siem Rep province in the 1990's contented himself with looting single pieces, all of Banteay Srei was looted by none other than André Malraux, the author. In the late 1920's, Malraux came with bullock carts, and proceeded to have these temples, which had by then collapsed and had not yet been put back up, loaded onto carts, and off the carts went towards the coast, where Malraux intended to ship them to the United States and sell them piecemeal to American collectors. The French colonial police had been watching, however. Malraux was stopped; the bullock carts were made to turn around and return to Banteay Srei, where they were unloaded and the stones

FIGURE 19. Banteay Srei, Entrance Gate. Ph. O. Bernier

FIGURE 20. Banteay Srei, Gate with parts recently missing. Ph. O. Bernier

"... whereas the general in charge of the army in Siem Rep province in the 1990's contented himself with looting single pieces, all of Banteay Srei was looted by none other than André Malraux, the author."

were put back down. In the 1930's, French archaeologists rebuilt as much of the temples as was possible. Some, however, were too damaged to put back up, and so, today, chunks of one of the temples are in the Musée Guimet in Paris. Happily, the other chunks are where they belong. Remarkably, still in place at the entrance gates are extraordinary scrolling curlicues, topped with flame-like sculpted elements.

But not all entry gates at Banteay Srei are in such good condition. **FIGURE 20** shows a gate with the same curlicue and flame-like element and also a little deity surrounded by very delicately carved leaves, but a part is missing. That is a recent dis-improvement. When I first saw Banteay Srei, that piece was in place. Who knows where it is. So, even the monuments themselves have recently been chiseled and looted.

Happily, that is not the case in a little subsidiary shrine at Banteay Srei (**FIG. 21**), which shows an incarnation of Vishnu ripping apart the demon's stomach. The demon's name is Hiranyakashipu, and he was an ardent devotee of the god Brahma. The story takes place in an earlier phase of the world when people and demons lived for thousands of years. Hiranyakashipu, having spent several hundred years worshipping his lord, decided to go and see Brahma in person. Brahma looked down and said, "My son, I know who you are, and I'm very pleased to see you; I will give you a present." And the demon said, "I would like you to make that present whatever I ask you for." Brahma responded, "I don't know about that, that's going very far. But I made a promise, and I must carry it out. That for which you ask, that I will give you." "In that case," the demon said, "I want you to arrange it so that I cannot be killed by day or by night; on the ground or in the air; by a man or by a god, or by an animal; indoors or outdoors." Brahma said, "If I grant you that, no one will be able to kill you." And the demon answered, "Well yes, that was rather the idea."

The demon went home and proceeded to make himself perfectly odious to everyone. He had a seven-year-old son, Prahlada, who was an ardent devotee of the god Vishnu. One day, the demon saw his little son worshipping Vishnu, and he said, "Stop it. In this house, I'm the only one who gets worshipped." But his son went on worshipping Vishnu. Finally, the demon, catching him at it again, became furious and said, "I care no more for your Vishnu than I do about this wooden

FIGURE 21. Shrine at Banteay Srei, relief showing Vishnu ripping the demon's stomach. Ph. O. Bernier

FIGURE 22. Banteay Srei shrine showing Shiva on the bull, Nandi. The missing Shiva head was looted c.1992. Ph. O. Bernier

"[The temples] desperately need to be cleaned of the lichens that are growing on them and damaging the stone."

pillar," and he kicked the pillar. When he did, the pillar opened up, and out came a creature, part man, part lion, who was an incarnation of the god Vishnu. But, being incarnate, he was no longer a god; nor was he a man, because he was part animal. But he was not an animal because he was part man. In this incarnation, Vishnu is called Narasimha. Narasimha picked up the demon and put the demon on his lap, where he was not on the ground and not in the air. He took him to the entrance of the building, no longer indoors, but not yet outdoors either. And it was that moment, when the sun was setting, when it was no longer day but not yet night, that with the talons of a lion, he ripped the demon's stomach open. That is what we see in this wonderful relief (**FIG. 21**) — the demon surrounded by extraordinary leaves with little deities, or, perhaps, little celestials. This is all intact.

The shrine directly opposite, however, has a relief (**FIG. 22**) showing Shiva on his mount, the bull Nandi, but the head is missing, a result of recent looting; looting since 1992. Many of these heads have been chiseled off so that they could more easily be sold.

There is another way in which bad things are happening to these temples (**FIG. 23**). They desperately need to be cleaned of the lichens that are growing on them and damaging the stone. It is not difficult to clean lichen off; but if you don't, with every rainy season, the lichens grow deeper into the stone until pieces of stone begin to chip off. Over the last few years, there has been no visible sign of cleaning of these extraordinary temples with carving of amazing quality. Nonetheless, a great deal at Banteay Srei is still in place. Malraux didn't have his way. We can still find there the best false doors in Cambodia and detailed reliefs, with deities emerging from leaves.

BANTEAY CHMAR

There were other sites that were not put back up by the French, although they were somewhat cleared. That is the case of Banteay Chmar, one of the many temples-cum-monastery complexes built in the thirteenth century by King Jayavarman VII (**FIG. 24**). The damage here is due to the passage of time. So, although Banteay Chmar has a great number of pieces which could be better protected, at least the damage has not been purposely inflicted.

On the other hand, there used to be one long wall (**FIG. 25**) with a number of large reliefs of the Buddha of Compassion — he is called Lokeshwara in Cambo-

FIGURE 23. Temples at Banteay Srei with lichens growing in the stone. Ph. O. Bernier

dia. This wall shows him with many arms surrounded by disciples about seven feet tall. A few years ago, looters took down a great chunk of this wall, loaded it onto trucks, and made their way to the Thai border. They were stopped, wonderfully enough. The trucks were brought back, and the now dissembled wall was taken to Phnom Penh, where it has been kept ever since. Better that than having chunks of these extraordinary reliefs sold here, there, and everywhere, but this foiled looting still results in the fact that the wall is no longer in place.

FIGURE 25. Banteay Chmar – Wall showing Lokeshwara, with a large looted section now in the reserves of the Phnom Penh Museum. Ph. O. Bernier

FIGURE 24. Banteay Chmar – Wall showing the damage of time. Ph. O. Bernier

Thus, damage and looting are integral parts of what remains of this extraordinary Khmer civilization. But something else is also missing in Cambodia, the intellectual knowledge of historical traditions that had developed and had been preserved over the centuries. That was utterly and completed eradicated by the Khmer Rouge. In barely four years, they managed to kill anybody who was educated and to destroy any repository of knowledge. They also destroyed the educational system of Cambodia. They removed from that unhappy country any intellectual capacity it might have had. And so, while we have to pay attention to the monuments, and to what has happened — and will happen — to them, and to exactly how the organization that controls these monuments, the Apsara Organization, plans to maintain and preserve them in the future, including how they will be protected from the increasing number of tourists that go through these fragile monuments, it is not enough to look at the monuments and worry about them. We also need to look at the Cambodian people. We need to wonder how they can be given back some of the capacity that was taken away from them by the Khmer Rouge and the subsequent Vietnamese invasion.

This is where I must point out that the Center for Khmer Studies, which I am involved with, is doing exactly that. We operate the only free public library outside of Phnom Penh. What a pleasure it is to watch Cambodians of every kind coming to the library and reading. Young people, monks, older men; they all are there filling the library day after day, and, I'm sure, will be filling the new library that we are building.

We are, I think, improving the quality of college-level education in the country. We are also teaching Cambodian students and publishing texts that are desperately needed. So, along with all the care that we have to give to the monuments, I think we have to give some care as well to the people and the culture as it is today.

• • •

Q&A

Q *What is the primary market for the stolen Cambodian sculptures?*

OLIVIER BERNIER (OB): There are a number of markets. There is one in the United States; a number of stolen or looted objects have appeared in American venues, I will say tactfully. A lot of the sculptures have also gone to Europe, probably Switzerland, but I expect that Sharon also has something to say about this.

SHARON FLESCHER (SF): Thailand is certainly a big market as well as a major middleman. Anyone who has been to Bangkok knows how easy it is to buy these objects there. Although there has been a crackdown on trafficking, many objects, as Olivier noted, left the country earlier, and legally, so it is harder to track Cambodian objects than it is to track objects from countries where the laws have been stringent for a long time. While many Cambodian objects are in the U.S., I think the European market is bigger, and, in any case, the U.S. now has a bilateral agreement with Cambodia restricting their importation.

Q *Since so many freestanding Cambodian stone sculptures have been out of the country for a long time and many are in museums, what are your thoughts about repatriation and returning them to the temples versus preserving them in museums?*

OB: This is an incredibly difficult question to answer. What you find in the Cambodian gallery at the Metropolitan Museum or in the Musée Guimet in Paris came out of Cambodia legally. It was not illegal to take these objects out of Cambodia. So, from that point of view, there is no legal issue. The point you made about their being preserved is an important one. The objects now in the museum at Phnom Penh, for instance, are perfectly safe; they are indoors; they are encased; they are in the climate in which they were initially made; they don't get rained on. They are fine. Whether those statues could with any advantage be put back in the temples from which they came is an interesting question. On the one hand, the temples are in many cases the equivalent of an empty apartment. The furniture is missing. Certainly the bronzes are missing, although most of them don't exist anymore, but also the freestanding stone sculptures that were in and around the temples. If they were to be put back in the temples and exposed to the, by now, over one million tourists a year who come to Cambodia, I suspect that there would be a very good chance of significant damage within a short period of time. So, although just as one would like to see all the Versailles furniture back in Versailles, just for a month, it would be thrilling to see all the Cambodian sculptures back in the temples, for a month, but it is never going to happen.

"It is not always easy to work in Cambodia. To be blunt, this is a country where corruption is pretty well universal . . ."

"The Khmers were great sculptors and great architects, but lousy engineers. . . . So if there is a shift in the soil, everything will fall down."

Q *Which countries are helping with the restoration in Cambodia?*

OB: The World Monuments Fund, an American-based organization with branches in other countries, has been working in Cambodia ever since it has been possible and safe to do so. They were responsible for the restoration of Preah Khan, one of King Jayavarman VII's great monasteries, and, as I mentioned earlier, they are redoing the roof above the Churning of the Sea of Milk relief. So that is one American organization. The French, of course, have been there for a very long time. They were not there under the Khmer Rouge and afterwards, but they are now back. The Japanese have funded work in various sites, not just at Angkor, but, for instance, at one of the pre-Angkor sites, Sambor Prei Kuk. The Germans and the English have also done work there. I'm not sure, however, that all those people are still doing very much. It is not always easy to work in Cambodia. To be blunt, this is a country where corruption is pretty well universal, and it is therefore not always easy for a foreign organization to work within what are considered normal parameters. There are fewer foreign organizations working in Cambodia now than there were say five or six years ago, but we can hope for the best for the future, I suppose.

Q *When I visited Cambodia last summer, the number of new hotels was overwhelming. Is the Cambodian preservation effort getting anything out of this development?*

OB: The quick answer is no. The whole environment has been subjected to enormous stresses, and, in fact, the Center for Khmer Studies held a conference recently to discuss what needed to be done. There are very serious concerns about the water table being depleted. It's a sandy soil, and if the water table is sufficiently depleted, the soil will start sagging. If it sags enough, the temples will fall. The Khmers were great sculptors and great architects, but lousy engineers. I won't go into that long subject. So if there is a shift in the soil, everything will fall down. A lot of powerful people in Cambodia have derived significant financial advantage from the building of these hotels, and from having large groups of, particularly Asian, tourists coming through very rapidly, spending a day, or day and a half. I'm quite sure that not much is being done either to preserve the environment or to preserve the temples. A major educational effort is needed, so that even the people who are at this moment making a great deal of money are slowly but surely killing the goose with the golden eggs.

Q *You didn't discuss the Elephant Terrace. Is it still there? And how about the big heads at Bayon?*

OB: Yes, all of that is still in place. I cut out discussion of the monuments that were less germane to what IFAR does, but I'm happy to tell you all of that is still in place. At the very end of the Elephant Terrace, on the side of a little hill, there is an extraordinary new find – a series of carvings – dug out by French archaeologists about eight to ten years ago. It is not clear whether they were originally pieces of a temple that were simply stacked there or whether they were going to be reused for something else.

Q *You showed the photo of the sculpture damaged by Clorox. Is that damage limited to a certain area or is it extensive?*

OB: No, it is limited to a certain area. They applied Clorox to about ten meters before they were stopped. And they complained bitterly about being stopped, I might add. Neo-Colonialism .

Q *Did the Khmers paint any of the facades or stone sculptures or reliefs? One of your slides showed a god who seemed to have been colored.*

OB: As usual, we can't be sure. But what is certain is that no traces of painting remain, anywhere. Chances

are, that if the artwork had originally been painted, there would be traces. When you see color, there are two possibilities. In the eighteenth century, the monks at Angkor Wat colored the background of some of the reliefs; it's a sort of a reddish color, which is still there, but it's not the original. Also, on occasion, mosses can turn red and make it look as if that area had been colored, but it is just nature taking over.

Q *Could you characterize for me the nature of the scholarly community in Cambodia?*

OB: There are a number of foreign scholars working in Cambodia, and I am happy to say, we at the Center for Khmer Studies have brought a number of foreign scholars who have helped nurture the beginning of a new community. For instance, there is a young Cambodian woman who decided that she wanted to spend her life reading Sanskrit and deciphering the Sanskrit inscriptions in Cambodia. We have been able to send her to study Sanskrit in India, where she has done very well. There is every expectation that she will complete her Ph.D. and will then be one of the few people in the world who will know about the particular variety of Sanskrit that was used in Cambodia. Although many of the remaining inscriptions are in ancient Khmer, a lot of them are also in Sanskrit, and it's not the same Sanskrit as in India. This young woman is not only doing very well, but also has been nurtured by one of our board members, Professor Batacharia, who is a great authority on the subject but not a man given to making easy compliments. When this past January I asked about this young woman, he said, "She's very good. She's really very good." So, slowly, a number of young people are beginning to grow into what I hope will eventually be a significant community of Cambodian scholars working in Cambodia.

Q *Can you elaborate on the vegetation problem? You alluded to it in your talk.*

OB: It is very simple. In Cambodia, a tree seed falls on the ground, you look away for ten minutes, and the next thing you know there is a forty-foot tree and you are wrapped in its roots. The vegetation grows incredibly fast. There are quite a number of species of ficus that produce enormous roots. Mosses and lichens grow very rapidly during the rainy season. Then, during the dry season, they turn black; you think they are dead – not at all. As soon as it begins to rain, they start all over again. So one of the many things the French archaeologists did when they started to work in Cambodia was to clear away the vegetation from the fallen temples, which had fallen not only because the Khmers were terrible engineers, but also because of the vegetation. So keeping the vegetation back is an absolutely essential task.

Q *The museum in Phnom Penh is in really bad shape. Is anybody helping that?*

OB: I'm happy to tell you that the museum in Phnom Penh is in much better shape. The electricity has been entirely redone; there is now one air-conditioned gallery, provided by the French. The bats are long gone, and the ceilings have been redone. Obviously, it is open to the elements, but nothing can be damaged because it is built around a courtyard. I'm also very happy to tell you that while until recently there had been no inventory of the collection, an inventory is now very nearly finished. Shelby White made a generous gift to support this. She asked us to administer this inventory, and, once it is finished, it will also be put on the Internet so that a huge piece of hitherto unavailable knowledge will be accessible to everyone.

SF: On that optimistic note, I want to thank our fabulous speaker and ask everyone to join us for wine and other refreshments.

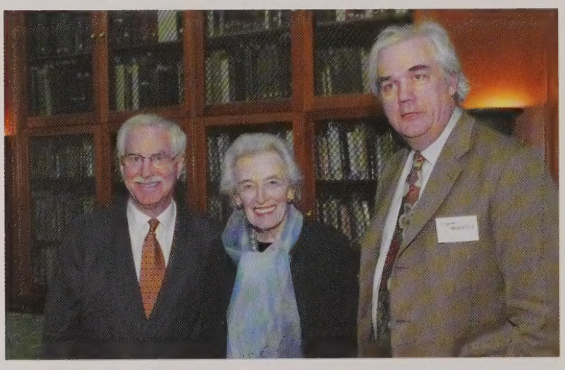
• • •

SCENES FROM THE *IFAR EVENING*

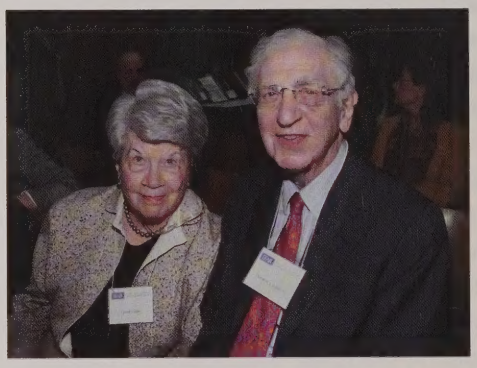
March 26, 2009

Mimi and Joseph Poser

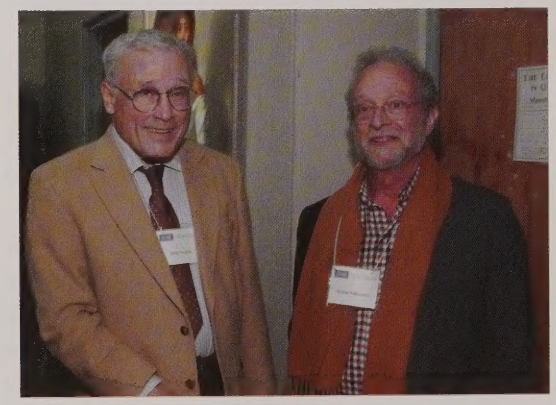
Lois de Menil and Christiane Fischer, IFAR Board Member



LEFT TO RIGHT: Olivier Bernier, Nancy Lassalle, and Jacques Hennessy



Laurel Cutler Israel and Theodore J. Israel, Jr.

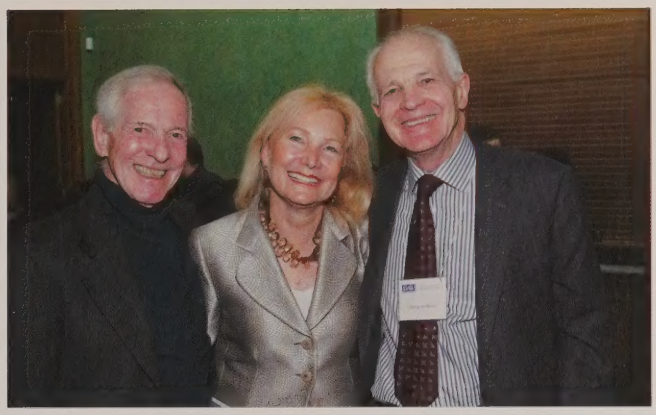


Brian Percival and Michael Rubenstein

Emma Stein

PHOTO CREDITS: STEVEN TUCKER

Catherine Cahill and William Bernhard



LEFT TO RIGHT: Jack A. Josephson, IFAR's Chairman; Sharon Flescher, IFAR's Executive Director; and Georges de Menil, the son of IFAR's first Chairman

LEFT TO RIGHT: Oliver Bernier, Charles Goldstein, and Madeleine Bennett

Carol Newhouse

Harold and Ellen Bruck with Vivian Ebersman (at right).

LEFT TO RIGHT: Lois de Menil. Selma Ertegun, Olivier Bernier, and Georges de Menil

DISPUTE AGAINST THE WARHOL AUTHENTICATION BOARD ALLOWED TO PROCEED

Second Plaintiff May Soon Step Forward

SHARON FLESCHER* AND MARY MORABITO ROSEWATER**

In a case that highlights some of the challenges inherent in authenticating works by Andy Warhol, and other contemporary artists whose very innovations challenge traditional notions of authorship, a Manhattan federal court in May denied much of a motion filed in 2007 by the Andy Warhol Art Authentication Board and other Warhol-related entities (the "Warhol Defendants"), seeking the dismissal of a lawsuit brought by Joe Simon (referred to in court papers as Joe Simon-Whelan), a London-based American collector.[1] A self-portrait of Warhol that Simon had submitted to the Board was twice rejected **(FIG. 1)**. Simon's lawsuit alleged claims of antitrust, fraud, unjust enrichment and violations of the Lanham Act. The Warhol Defendants sought to have the entire suit dismissed on the grounds that Simon was bound by submission waivers agreeing not to sue, and that in any case, Simon had failed adequately to allege his claims.

In June,[2] following the court's decision on the motion to dismiss, the Warhol Defendants filed an Answer and Counterclaim in the suit, in which they denied the factual bases for Simon's allegations and countersued him for breaching the waiver agreements and for indemnification of their legal fees and expenses, as specified in those agreements. More recently, during a late-July status conference before Judge Laura Swain, Simon's attorneys discussed their intention to add an additional plaintiff to the suit.[3] While they did not provide the court with details about the plaintiff's claims, they did inform the defendants of his identity. IFAR has learned that this individual is the owner of a silk-screened Warhol self-portrait from the same series as Simon's. Significantly, this painting was not only signed and dedicated by Warhol himself (see text below and Figure 7), but it was featured on the book jacket of Rainer Crone's 1970 Warhol catalog raisonné. Nonetheless, it, too, was rejected by the Authentication Board.

FIGURE 1. Andy Warhol(?), *Self-Portrait,* Silkscreen on canvas, 24" x 20". Coll. Joe Simon; photo courtesy Joe Simon.

* Sharon Flescher, Ph.D., is Executive Director of IFAR and Editor-in-Chief of the *IFAR Journal.*

** Mary Morabito Rosewater, J.D., is an Intern at IFAR and a M.A. candidate in modern and contemporary art history at S.U.N.Y., Purchase.

1 *Simon-Whelan v. The Andy Warhol Foundation for the Visual Arts,* No. 07 CV. 6423 (LTS), 2009 U.S. Dist. LEXIS 44242 (S.D.N.Y. May 26, 2009).

2 June 19, 2009.

3 Transcript of Civil Cause for Conference, at 4-5, *Simon-Whelan v. The Andy Warhol Foundation for the Visual Arts,* No. 07 CV. 6423 (S.D.N.Y. filed July 24, 2009).

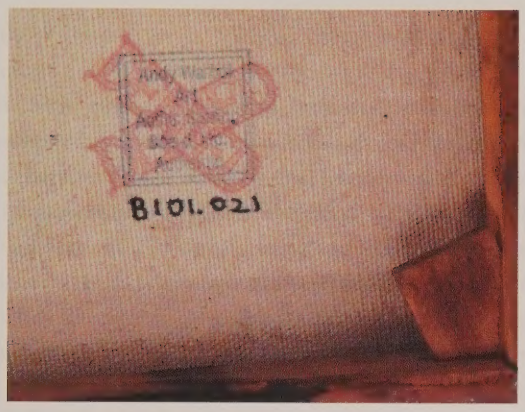


FIGURE 2. "Denied" Stamp (February 2002), canvas verso, lower right, with identification number B101.021.

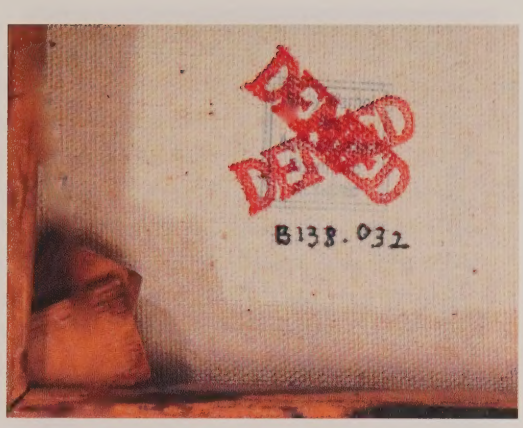


FIGURE 3. "Denied" Stamp (May 2003), canvas verso, lower left, with identification number B138.032.

At issue in the case is the authenticity of Simon's (and the possible new plaintiff's) silkscreens. Simon purchased his painting for $195,000 in 1989. Prior to his purchase, the work had been authenticated by the Estate of Andy Warhol (which had been responsible for Warhol authentications before the creation of the Authentication Board in 1995). In December 2001, Simon submitted the work to the Board in anticipation of a planned sale; in February 2002, the Board denied its authenticity **(FIG. 2)**. He resubmitted the work in 2003 with additional supporting documents, but it was denied again **(FIG. 3)**. Accordingly, the painting has been dubbed, in the court case and elsewhere, *Double Denied* **(FIG. 4)**.

Simon brought suit in July 2007 in the United States District Court for the Southern District of New York. In his Amended Class Action Complaint (the "Amended Complaint")[4], Simon alleged that the Authentication Board; the Estate of Andy Warhol; the Andy Warhol Foundation for the Visual Arts; the Foundation's exclusive sales agent, Vincent Fremont; and others, unlawfully conspired to refuse to authenticate, and to rescind prior authentications of, genuine Warhol works — including *Double Denied* — thus effectively removing those works from the marketplace and causing prices for Warhol works to become artificially inflated. Those actions, Simon asserted, had the effect of inflating the value of the Warhol works owned by the Foundation, resulting not only in increased revenues to the Foundation if it chose to sell any of those works, but also in greater profits to Fremont, who earns a commission on each sale. Thus, Simon defined the "class" of the class action as all persons who purchased Warhol works after Warhol's death at artificially inflated prices.

Simon claimed that, in addition to violating the antitrust laws, this scheme unjustly enriched the defendants. He also alleged a fraud claim against Fremont and the Board, based on allegations that they fraudulently induced him to submit his painting for authentication, and to undergo additional research about the painting's history at his considerable expense, when it was a foregone conclusion that its authenticity would be denied.

Regardless of how Simon has framed his legal claims, what ultimately reverberates in his Amended Complaint is his sense of frustration with the authentication process, and the perceived unfairness of having no other recourse after the Board's decision.

In ruling on the Warhol Defendants' motion to dismiss, Judge Swain found that Simon had adequately alleged most of his claims. As discussed in more detail below, she disallowed, however, certain aspects of his antitrust and Lanham Act claims. In addition, and potentially very significantly, Judge Swain ruled that an agreement that Simon had signed before submitting his work to the Authentication Board waiving, among other things, his right to sue, did not, at this juncture, prohibit the action from going forward. "A party," she noted, "may not invoke such an agreement to insulate

[4] Amended Class Action Complaint dated November 7, 2007.

FIGURE 4. ***Self-Portrait,*** **verso, showing both "Denied" stamps.**

"While Simon's legal case is based principally on economic theories of supply and demand, it poses important questions about art authenticity and the authentication process."

itself from *intentional* wrongdoing like that alleged in this case." (Emphasis added.)

While Simon's legal case is based principally on economic theories of supply and demand, it poses important questions about art authenticity and the authentication process: How does one define authenticity for an artist whose very practices question the need for the artist's hand in the production process? How much does the artist need to be involved for the work to be considered authentic? What if the artist did not make the work, but "accepted" the work as his? How do we define artistic "intent"? To what extent, if any, should an authentication board, catalogue raisonné committee, or scholar, be bound by prior determinations of authenticity? And, what are the implications of an authentication board having a possible financial interest, directly or indirectly, in the value of the works it is asked to evaluate?

In addition, in setting aside, at least initially, Simon's agreement not to sue the Board, this case may have serious ramifications for art professionals — whether they are nonprofit foundations (such as IFAR),[5] catalogue raisonné committees, academics, connoisseurs, or authentication boards — involved in the difficult task of authentication, who rely on waivers to protect them from suit by parties who are disappointed when their work is found not to be authentic. Willingness to deliberate and decide issues of authenticity, impartially and on the merits, rests, in part, on the ability to work without fear of litigation. The court's recent ruling, if it holds, suggests that those waivers may not be held to provide the level of protection that many relying on them reasonably believe them to have.

As has been indicated in a joint pretrial statement submitted to the court by both sides in late June of

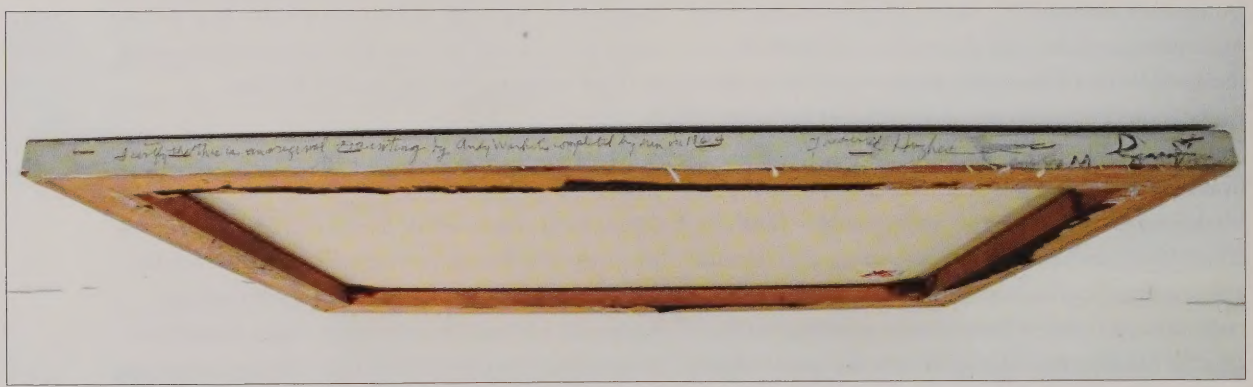


FIGURE 5. Statement by Frederick Hughes on the side of Simon's painting: "I certify that this is an original painting by Andy Warhol completed by him in 1964, Frederick Hughes."

[5] IFAR's Authentication Research Service, established in 1969, requires all applicants to sign a submission agreement.

2009,[6] the parties are likely to dispute various issues going forward, including the timing and scope of discovery, and whether class certification is appropriate.[7] Judge Swain addressed some of those issues during the July status conference. She stated that discovery should begin immediately, and that she would permit its scope to go beyond issues concerning class certification to include the plaintiff's individual claims. Counsel for the Warhol Defendants, aware at the time that Simon was planning to file a Second Amended Complaint, indicated that they would consider moving to dismiss the amendments and oppose class certification, which they described as "a big issue." Significantly, they asked that a protective order be put in place to protect the confidentiality of the Board's deliberations for determining whether a work of art is genuine, noting that they did not want to provide "a road map to people who would like to sell fake Warhols. . . ." Simon's counsel indicated a willingness to consider such a protective order.

THE STORY OF *DOUBLE DENIED*

Double Denied is one of a series of approximately ten[8] identical Warhol self-portraits on cotton duck canvas said to have been produced, at Warhol's direction, in 1965 by Richard Ekstract. Now a successful magazine publisher (including *Hamptons Cottages and Gardens*), Ekstract at the time was Warhol's "tech guru"[9] and publisher of a trade periodical called *Tape Recording.*

According to public documents, Warhol allowed Ekstract to make images of him for the cover of *Tape Recording* in connection with a party promoting the magazine and Warhol's work. To accomplish this, Warhol gave Ekstract an acetate transparency of a 25¢ photograph that he had taken of himself in a Times Square photo booth. Ekstract then took the acetate to a silkscreen factory, which made a silkscreen from the acetate and printed the final images, allegedly per Warhol's telephone instructions. This production method was somewhat of a departure from Warhol's typical practice of the time, in which he or his assistants hand-applied the paint in his studio. Yet, as his use of silkscreens and even the 25¢ automated photograph might imply, Warhol was, even then, beginning to deploy the innovative techniques — mass production, commercial processes, mechanization, and "factory" production — that would ultimately define his work and, in many respects, significantly alter modern artistic practices.

Ekstract brought the final images to Warhol's studio, and Warhol allegedly approved them. He did not sign them. In September 1965, the silkscreens from Ekstract's series were displayed at a party that Ekstract threw for Warhol on the unused train siding underneath the Waldorf-Astoria Hotel (a fitting venue it would seem for the launch of Warhol's underground videos); the party was documented in the *Herald-Tribune* (October 3, 1965). When Ekstract was able, through his industry contacts, to arrange a deal that provided Warhol with valuable state-of-the-art video equipment for use in his films, Warhol is said to have used the paintings as a form of barter, allowing Ekstract and others involved in the promotion to keep the silkscreens in exchange for the equipment. One of those paintings was ultimately purchased by Joe Simon.

In 1964, about a year before Ekstract produced this series of silkscreens, Warhol produced in his studio a series of eleven silkscreen self-portraits on linen canvas from the same image later used by Ekstract. However, unlike the Ekstract-related self-portraits, which were identical in all aspects — printed on cotton duck with blue eyes and a tomato red background — the silkscreens in the series produced by Warhol were hand

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6 Amended Joint Preliminary Pre-Trial Statement dated June 23, 2009.

7 Under Rule 23 of the Federal Rules of Civil Procedure, a case can only proceed as a class action if (i) the class is so numerous that joinder of all members is impracticable; (ii) there are questions of law or fact common to the class; (iii) claims or defenses of the class representative are typical of those of the class; and iv) the class representative will fairly and adequately protect the interests of the class. A court is required to make this determination "[a]t an early practicable time after a person sues or is sued as a class representative."

8 The Authentication Board's letter to Joe Simon dated May 18, 2004 explaining its reasons for rejection of the work refers to "ten identical works" known to the Board. The Amended Joint Peliminary Pre-Trial Statement, however, refers to Simon's work and "the approximately ten other identical works in the same series." But, in their June 19, 2009 Answer and Counterclaim (paragraph 121), the Warhol defendants specifically "deny knowledge or information sufficient to form a belief as to how many works exist that are identical to Simon's Painting . . ."

9 Kenneth Goldsmith, ed., *I'll be your Mirror: The Selected Andy Warhol Interviews,* introduction to Richard Ekstract, "Pop Goes the Videotape: An Underground Interview with Andy Warhol," (New York: Da Capo Press, 2004), p. 73.

painted, varied as to eye and background coloration, and made on linen. All have been "accepted" by the Warhol Authentication Board.

DOUBLE DENIED IS AUTHENTICATED, THEN DENIED

Double Denied first entered the art market in late 1987, when its initial owner sought to auction it through Christie's. Prior to the auction, Christie's sought, and received, authentication of the painting from the Warhol Estate. Apparently to confirm this authentication, Vincent Fremont, a defendant in the lawsuit who, at the time, was a trustee of the Foundation, stamped the painting with Warhol's signature. As Fremont told *Vanity Fair,* however, "I authenticated it with a qualifier . . . a letter was attached to the effect that there might be a need to revisit the situation."[10] With Fremont's stamps, the painting was sold by Christie's in its November 1987 sale.

". . . Warhol produced in his studio a series of eleven silkscreen self-portraits on linen canvas from the same image later used by Ekstract. . . . Unlike the Ekstract-related portraits, which were identical in all aspects . . . the silkscreens in th[is] series . . . were hand painted . . ."

In 1988, art dealer Ronald Feldman was interested in buying the work, but was concerned because it was printed on a cotton duck canvas, whereas he was aware of the other works that were printed on linen. To address those concerns, Feldman asked Fred Hughes, then Executor of Warhol's estate and Chairman of the Foundation, to opine as to the work's authenticity. Hughes, himself, owned one of the Warhol self-portraits painted on linen and was thus presumably aware of the differences between his self-portrait and those from the Ekstract series. Nonetheless, he confirmed the authenticity of *Double Denied*, inscribing the left edge of the painting: "I certify that this is an original painting by Andy Warhol completed by him in 1964" **(FIG. 5)**. Feldman thereafter purchased the painting. By 1989, *Double Denied* had changed hands again before coming up for sale with London art dealer Michael Hue-Williams, from whom Simon purchased it.

Shortly after Simon's purchase, however, the Estate began denying, without explanation, the authenticity of other self-portraits from the Ekstract series. In one such instance in December 1989, the Warhol Estate allegedly offered to purchase the rejected Ekstract painting for $22,000. That offer was rejected, however, because it did not provide an option for the owner to re-purchase it if the Estate in the future deemed the painting authentic. In June 1990, Richard Ekstract himself submitted one of the series for authentication. His submission was rejected, despite a letter from the Estate stating that it had "no basis on which to doubt that the silkscreening of the work onto canvas was authorized by Andy Warhol . . ."

In 2001, Simon, allegedly unaware that the Estate had begun rejecting other works from the Ekstract series, located a purchaser interested in buying *Double Denied* for $2 million. Around that same time, Simon claims, Fremont had begun a "campaign" to get Simon to submit the painting to the Board. Simon asserts that Fremont even implied that *Double Denied* was appropriate for inclusion in the catalogue raisonné, a multi-volume, multi-year project then underway, co-sponsored by the Warhol Foundation and Thomas Ammann Fine Art.[11] Simon further claims that when his prospective buyer contacted Georg Frei, co-editor of the catalogue raisonné, to verify statements that Frei allegedly had made to Simon about the painting's historical significance, Frei urged the buyer to have the painting submitted to the Board for authentication and inclusion in the catalogue.

Simon ultimately submitted the work to the Board in December 2001, signing a mandatory "Submission Agreement", in which he waived his right to sue the

[10] *Quoted in* Michael Shnayerson, "Judging Andy," *Vanity Fair,* November 2003, p. 214.

[11] The catalogue raisonné has since been published. See, Georg Frei and Neil Printz, co-editors, *The Andy Warhol Catalogue Raisonné: Paintings, Sculptures and Drawings,* (New York and London: Phaidon, Vols. 1 & 2), 2002, 2004. Volume 3 is in preparation. The years 1964 and '65, when the Ekstract silkscreens were produced, are covered in Volume 2.

Board if its opinion was unfavorable. That February, the Board rejected the authenticity of the work and stamped the back of the canvas "DENIED" **(FIG. 2).**[12] The rejection letter did not state reasons for the denial. However, according to Simon, the Board encouraged him to collect additional information about the painting's history and re-submit the work along with the supporting documentation. After a year's research, Simon amassed additional support for his painting, including letters from supporters, some with first-hand knowledge concerning the work's origins. The Authentication Board nonetheless rejected the painting in July 2003, once again stamping it with an "X" shaped "DENIED" **(FIG. 3)**. Again, the rejection letter did not provide reasons. In May, 2004, however, the Authentication Board, in a departure from its usual procedures, sent Simon a letter setting forth its reasons for denying the Warhol attribution.

"John Richardson . . . a eulogist at Warhol's funeral, urged the Authentication Board to reconsider its decision as well as its policies in general, noting that '. . . If Joe Simon's self-portrait is not authentic, so, it would seem, is most of Warhol's oeuvre'."

REASONS FOR THE BOARD'S DECISION

Contrary to some reports in the press, the Board's reasons were not arbitrary; rather, they were many and substantive. Relying primarily on a comparison between Simon's painting and the series of similar, "accepted" self-portraits that Warhol made around the same time, the Authentication Board stated that:

- *Double Denied* was one of a series of ten identical works known to the Board, a number that the Board described as "without precedent in the corpus of Warhol's paintings."
- Unlike the hand-painted backgrounds, eyes, skin tones and hair in the 1964 self-portraits, the corresponding areas in *Double Denied* and the nine identical works are printed.
- Whereas the 1964 Warhol-made self-portraits were on linen, *Double Denied* and the identical other works were made on cotton.
- There was evidence that *Double Denied* and the identical works were not made from the same silkscreen that Warhol had used to make the 1964 self-portraits.
- The Board's research indicated that the commercial printer (Norman Locker) who made *Double Denied* and the identical other works said that he received materials and specifications from another party, not Andy Warhol, and that he never spoke with Warhol.
- Finally, the Authentication Board claimed that it knew of "no independently verifiable documentation from this period in question, 1964 through 1965, to indicate or suggest that Warhol sanctioned or authorized anyone to make the work that you submitted for review or the nine identical examples." [13]

In a 2006 BBC1 documentary entitled *Andy Warhol: Denied,* Ronald Spencer, counsel to the Warhol Defendants, reiterated that viewpoint:

> We have the information directly from the print shop that printed these things. There was no contact between Warhol . . . and the print shop. There was no supervision, no direction, no nothing, between Warhol and the print shop. If someone can show the Board that Andy Warhol intended to create a work this way . . . well fine, but we have no evidence of that. . . . That Andy Warhol would be happy to have it go out to some printing company that he never even heard of in New Jersey . . . that's not the way Warhol worked.[14]

[12] The rejection letter was dated February 7, 2002 and signed by Sally King-Nero, one of the four members of the Authentication Board. The other Board members, whose names appeared on this letter as well as the two subsequent ones sent to Simon, were: David Whitney, President (since deceased); Robert Rosenblum, Treasurer (since deceased); and Neil Printz, Secretary. Printz is also co-editor of the new catalogue raisonné. In December 2001, Printz participated in IFAR's conference on "Catalogues Raisonné and the Authentication process."

[13] Letter dated May 18, 2004 from the Andy Warhol Art Authentication Board to Joe Simon, Ex. E to the Amended Class Action Complaint.

[14] *Andy Warhol: Denied,* British Broadcasting Company 1 (January 24, 2006), Chris Rodley, Producer and Director; Alan Yentob, Presenter.

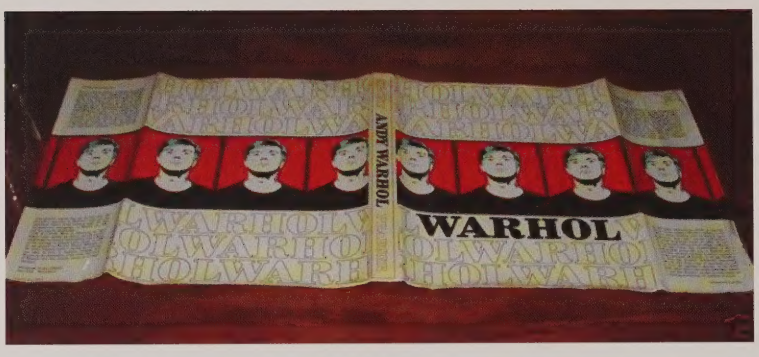

FIGURE 6. Book jacket of the 1970 Warhol catalogue raisonné authored by Rainer Crone showing one of the self-portraits from the Ekstract series.

One of the silkscreens from the Ekstract series "was not only included in Rainer Crone's 1970 catalogue raisonné of Warhol's work — a predecessor to the new catalogue being co-sponsored by the Warhol Foundation — but it was chosen as the book jacket image. . . . Warhol himself, suggested and chose the image."

The issue, Spencer made clear, is not simply that Warhol himself didn't make the work: "If Andy Warhol conceives the idea, says to one of his assistants, here's how we should do it; then supervises the assistant's execution of that, and then approves of that after he supervises the assistant in working, then, that's a Warhol."

STATEMENTS BY SIMON'S SUPPORTERS

Simon, naturally, disagrees with the Board's assessment that Warhol was uninvolved in the making of the Ekstract paintings. Moreover, to the extent that Warhol delegated aspects of the process to others, such a move, Simon notes, would have been consistent with Warhol's very artistic innovations — innovations that fundamentally questioned the traditional role of the artist in the practice of art making.

Simon has amassed an impressive group of supporters for his point of view. Paul Morrissey, who was Warhol's manager in 1965 and was involved with the creation of *Double Denied*, submitted a letter to the Authentication Board recounting that Warhol had given Ekstract permission to make the prints and that Warhol had approved them; they were done "under Andy's supervision." Morrissey opined that, based on Warhol's practice, "if Richard Ekstract and his printer . . . were screening Andy's images under Andy's instruction and supervision, they would certainly still be works made by Andy Warhol." After all, Morrissey noted: "There was little handwork done by Andy in those years in the creation of any of the silkscreen images."[15]

In his letter to the Authentication Board, art curator Sam Adams Green recalled Warhol "pushing" for one of the Ekstract-made self-portraits to be included in the 1965 Warhol Retrospective, which Green was curating at Philadelphia's Institute of Contemporary Art. Although Green ultimately did not include the painting — because it was, in his view, "too manufactured" — he recalls Warhol having "said it exemplified his new technique for having works produced without his personal touch. . . . At that time he was ambivalent about his personal authorship."[16]

John Richardson, art historian, IFAR Art Advisory Board member, friend of Andy Warhol, and eulogist at Warhol's funeral, urged the Authentication Board to reconsider its decision as well as its policies in general, noting that "[s]ince some of many prominent artists today never actually execute their own work, this policy would seem questionable to say the least. If Joe Simon's self-portrait is not authentic, so, it would seem, is most of Warhol's oeuvre." [17]

Jean-Paul Russell, of the printing studio where Warhol had his last series of self-portraits made, recounted to the Board his recollection of Warhol's methods, which included giving instructions over the telephone. Russell stated that "[t]here really is no difference whatsoever in the way that the paintings made by Richard

[15] Letter dated Nov. 1, 2002 from Paul Morrissey to the Andy Warhol Art Authentication Board.

[16] Letter dated January 30, 2003 from Sam Adams Green to the Andy Warhol Art Authentication Board.

[17] Letter dated February 1, 2003 from John Richardson to the Andy Warhol Art Authentication Board.

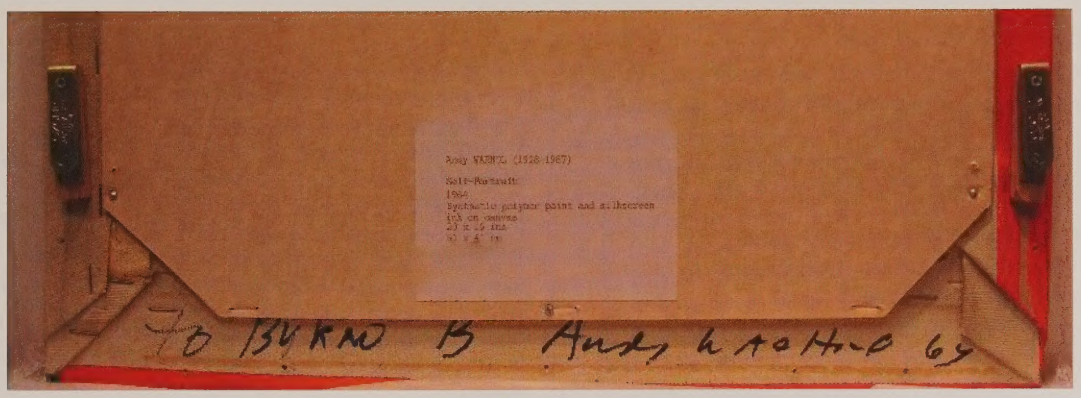

FIGURE 7. Verso of Andy Warhol (?) self-portrait once belonging to Bruno Bischofberger, showing stretcher with dedication in Warhol's handwriting: "To Bruno B Andy Warhol 69".

Ekstract from Andy Warhol's transparencies in 1965 or the last series of self-portraits that Rupert Smith and I had made."[18]

But perhaps the most compelling argument relates to the silkscreen owned by the planned new plaintiff. That work, too, belongs to the Ekstract series, and it was not only included (as # 169) in Rainer Crone's 1970 catalogue raisonné of Warhol's work [19] — a predecessor to the new catalogue being co-sponsored by the Warhol Foundation — but, as already noted, it was also chosen as the book jacket image **(FIG. 6)**. The red background and blue eyes of the portrait on the cover make it unmistakable as an image belonging to the Ekstract series. And, in fact, the entry for number 169 states that it is the "color plate on the jacket." The image selection was not an accident. Rainer Crone has confirmed to IFAR that Warhol was very involved in the catalogue raisonné process and that Warhol, himself, suggested and chose the jacket image. [20]

The painting at one time belonged to Warhol's Swiss dealer, Bruno Bischofberger. Not insignificantly, Warhol signed and dedicated that painting on the stretcher: "To Bruno B Andy Warhol 69" **(FIG. 7)**. It

> "It is not, in and of itself, that unusual [for works to be included in a previous catalogue and excluded from the new one]. Scholarship advances, new information comes to light, and authors and researchers revise opinions . . ."

is difficult to imagine that Warhol would have done so if he disavowed its authorship. Nonetheless, that painting, too, was excluded from the new catalogue raisonné, and, it, too, received a rejection letter from the Authentication Board (May 21, 2003), notwithstanding the Board's acknowledgement that the painting bore the signature and dedication of Warhol.

THE RIGHT OF SCHOLARS TO CHANGE OPINIONS

Although not insignificant that this silkscreen was included in the 1970 catalogue raisonné but excluded from the new catalogue published in 2002 – 2004, it is also not, in and of itself, that unusual. Scholarship advances, new information comes to light, and authors and researchers revise opinions expressed by predecessors. They must be able to do that, or scholarship would never move forward. Scholars, at times, even revise their own opinions. Theodore E. Stebbins Jr., for example, author of the catalogue raisonné on Martin Johnson Heade, excluded several works from the revised catalogue published in 2000 that were included in his earlier 1975 version.[21] Similarly, the

[18] Letter dated Oct. 25, 2002 from Jean-Paul Russel to the Andy Warhol Art Authentication Board. Simon reprints this and other letters (some of which are referenced in this article), along with news stories, photographs, and other information relating to his case on his Website: http://www.myandywarhol.com.

[19] Rainer Crone, *Andy Warhol* (Praeger Publishers: New York and Washington, 1970).

[20] Conversation between Rainer Crone and IFAR's Executive Director, Sharon Flescher, August 24, 2009. According to Professor Crone, Warhol suggested two images – seemingly identical self-portraits – and then, with Crone, chose the one that he had dedicated to Bruno Bischofberger (see discussion below).

[21] Theodore E. Stebbins, Jr., *The Life and Work of Martin Johnson Heade: A Critical Analysis and Catalogue Raisonné* (Yale University Press: New Haven, 2000). See Stebbins' discussion of the Marsh drawings on pp. 167-169.

Rembrandt Research Project in Holland has reduced by about half the number of previously accepted autograph works by Rembrandt.[22]

Many catalogue raisonné committees, authentication boards, independent scholars — and IFAR, too — expressly state that their opinions are based on "current" scholarship. The Wildenstein Institute, which is currently working on more than a dozen catalogues raisonnés, states that its opinions are valid only "à ce jour." The Warhol Authentication Board Submission Agreement specifically addresses this issue by stating: "Information may be received which causes the Authentication Board to doubt or to change the opinion, if any, expressed by it in a letter hereinabove referred to." In such an eventuality, the Board may choose to deliver a "substitute letter" with a "revised opinion."

"Finding that Simon had adequately alleged intentional wrongdoing, Judge Swain held that the Submission Agreements could not, at this stage, bar suit."

What is, perhaps, different in the current dispute is that the change of opinion regarding the Ekstract silkscreens seems to be less the result of new information than a rethinking of what constitutes an authentic work by Warhol, a moving of the bar, as it were. This is not beyond the prerogative of an authentication committee, which has the difficult — and at times thankless — task of determining the real from the fake, a task all the more difficult with a prolific and innovative artist like Warhol, who was challenging artistic norms. But one can't help raising the question of whether the bar has been appropriately moved if the artist, himself, "seems" to have accepted the works in the series as his. Perhaps there is room for a category in between "authentic" and "inauthentic." In any case, it is difficult not to be sympathetic to an unfortunate owner caught between the revised standards and opinions.

THE COURT'S RULING ON THE WARHOL DEFENDANTS' MOTION TO DISMISS

In November 2007, the Warhol Defendants asked the court to dismiss Simon's Amended Complaint. They argued that the Submission Agreements — in which Simon specifically waived his right to sue — should mandate dismissal. They also argued that the lawsuit should be dismissed because the Amended Complaint failed adequately to allege key elements of each of the claims.[23]

In their motion papers, the Warhol Defendants argued that *Lariviere v. Thaw,*[24] a case in which a New York state court relied on a similar waiver in granting summary judgment in favor of the Pollock-Krasner Authentication Board in an authentication dispute over a purported Jackson Pollock painting excluded from the Pollock catalogue raisonné, required dismissal in this case as well. What is more, in the Pollock case, the plaintiff and his attorney were actually fined for bringing a frivolous suit. The Warhol Defendants further argued that:

> . . . qualified art experts will not serve on authentication boards if they are subjected to lawsuits from disappointed art collectors who have considerable financial resources as well as an incentive to second-guess the experts' opinions.[25]

Judge Swain was not convinced by those arguments. Rather, she pointed to the principle that, under New York law, a party cannot contractually insulate itself from liability for *intentional* wrongdoing. Finding that Simon had adequately alleged intentional wrongdoing, Judge Swain held that the Submission Agreements could not, at this stage, bar suit. While seemingly at odds with *Lariviere,* this ruling seems at least to be somewhat open-ended, possibly allowing the defen-

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22 See a discussion of the Rembrandt Research Project's work in Ernst van de Wetering, "Thirty Years o f the Rembrandt Research Project: The Tension Between Science and Connoisseurship in Authenticating Art," in *IFAR Journal,* Vol. 4, no. 2 (2003), pp.14-27.

23 Defendants' Memorandum in Support of Motion to Dismiss Amended Complaint, dated Nov. 30, 2007.

24 *Lariviere v. Thaw,* 2000 N.Y. Misc. Lexis 648 (Sup. Ct. June 26, 2000).

25 Memorandum in Support of Motion to Dismiss Amended Complaint, p. 42.

dants to revisit the issue if Simon cannot ultimately come up with adequate evidence to support his allegations of intentional wrongdoing. Indeed, given that the Warhol Defendants have counter-claimed against Simon based on language in the Submission Agreements, it seems possible that the ultimate effect of the waiver has yet to be determined. Nonetheless, currently, based on this ruling, the law as to waivers for art authentication seems less than clear, and leaves open the question of whether well-crafted allegations of intentional conduct — regardless of their truth — are all it takes for a party to get past an agreement not to sue.

The court next considered the "plausibility" of Simon's antitrust allegations. Judge Swain found that Simon had adequately alleged a scheme "to restrict artificially competition in the market for authentic Warhols" and facts "indicative of anticompetitive conduct with a specific intent to monopolize and a dangerous probability of achieving monopoly power . . ." In particular, the court held that Simon had adequately alleged that the Warhol Defendants:

- sought out owners of Warhol paintings and induced them to submit their works for authentication, when the denial of those works was a foregone conclusion;
- denied the authenticity of previously authenticated works, particularly when doing so would be in the Foundation's financial benefit;
- staffed the Authentication Board with unqualified people;
- followed no set standards of review and typically refused to explain the reasons for its decisions;
- bribed favored gallery owners and dealers to go along with the scheme by offering to sell them Warhol works far below market value; and
- created market conditions in which owners of authentic Warhol works would forgo putting them on the market, for fear that their authenticity will wrongfully be denied.

Importantly, however, the court found that Simon, who had not purchased *Double Denied* from the Foundation and failed to allege that he was harmed by price-inflationary aspects of the alleged conspiracy, lacked standing to assert aspects of his antitrust claim that were based on price-inflation. While Simon may still be able to establish an antitrust claim based on the allegations accepted as well-plead by the court, this aspect of the court's ruling raises the critical issue of whether Simon — who, as mentioned above, seeks to be the class representative for "all persons who purchased Warhol works at *artificially inflated prices* . . . ." (emphasis added) — now has standing to represent such a class. This is because, in order to be a class representative, "the claims or defenses of the representative" party need to be "typical of the claims or defenses of the class."[26]

". . . the court found that Simon, who had not purchased *Double Denied* from the Foundation and failed to allege that he was harmed by price-inflationary aspects of the alleged conspiracy, lacked standing to assert aspects of his antitrust claim that were based on price-inflation."

The court similarly allowed Simon's Lanham Act claim to proceed, with limitations. In particular, it will allow Simon to advance his claim that the contents of the Board's letters denying the painting's authenticity amount to a "false or misleading description of fact" about *Double Denied*.[27] While acknowledging that "it is well established that a statement of opinion is not actionable under the Lanham Act if it could not reasonably be seen as stating or implying provable facts about a competitor's goods or services" (internal quotations omitted), the court held that, at this juncture, it was unable to determine whether the Board's letters — while "purporting to be opinions" — could reasonably be seen as stating provable facts about the authenticity of *Double Denied*. The court went on to dismiss Simon's Lanham Act claim to the extent that it was based on the exclusion of *Double Denied* from the catalogue raisonné, because he failed to allege, as required by Section 43(a) of the Act, a connection between the catalogue raisonné and the commercial offer of goods and services.

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[26] Fed. R. Civ. P. 23 (a) (3).

[27] 15 U.S.C. § 1125 (a) (1).

As with the court's holding regarding the enforceability of the waiver, the decision to allow a Lanham Act claim to proceed based on an authentication letter may be troubling to those involved in art authentication. Such a ruling seems to reinforce a framework that discourages art professionals from engaging in authentication analyses, for fear that their good faith opinions might be fodder for lawsuits by disappointed art owners. However, as with the waiver issue, it seems likely that the question of whether the Board's statements on *Double Denied's* authenticity are nonactionable opinions will be revisited in this case.

Finally, the court addressed Simon's claims for unjust enrichment and fraud. Simon's theory as to the unjust enrichment claim is that principles of equity should prevent the Warhol Defendants from profiting from their alleged unlawful scheme to deny the authenticity of genuine Warhol works. His theory as to the fraud claim is that Vincent Fremont and the Board fraudulently induced him to submit his painting for authentication, when they knew ahead of time that they would deny its authenticity. Without delving greatly into specifics, the court held that Simon had adequately alleged both claims.

STATUS OF THE CASE

The possible inclusion of an additional plaintiff may alter the landscape of the case. It remains to be seen, for instance, whether any new allegations would be sufficient to resurrect Simon's price inflation antitrust theory, and whether the possible new plaintiff might be an appropriate class representative. Undoubtedly, the Warhol Defendants will scrutinize any amendments and may seek to have them dismissed. They will almost certainly oppose class certification. Meanwhile, discovery looms, with the parties attempting to come to a consensus as to confidentiality and timing. A status conference is scheduled for October, when many of these issues will be presented to the court. Whatever happens, this is an important case to watch, for its potential – and perhaps profound – implications for the art world.

• • •

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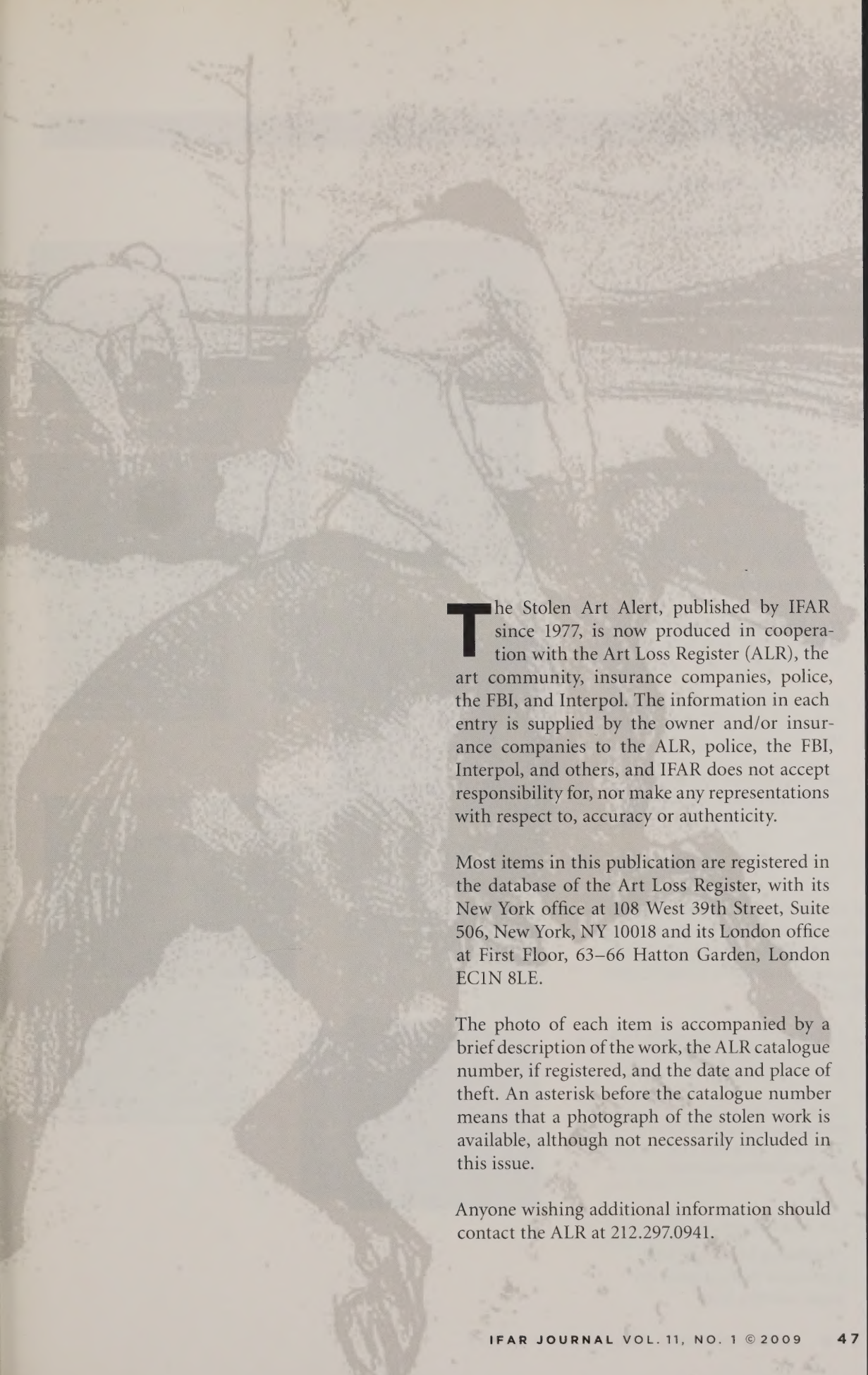

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The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, if registered, and the date and place of theft. An asterisk before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

Anyone wishing additional information should contact the ALR at 212.297.0941.

STOLEN ART*

PAINTINGS

*The following six paintings were stolen from a private residence in Montecatini Terme, Pistoia, Italy on March 18, 2008. *L09.358:*

1 CRISTIANO BANTI (Italian, 1824-1904). *Confidences,* 1868. Oil on canvas. 45.5 x 26 cm.

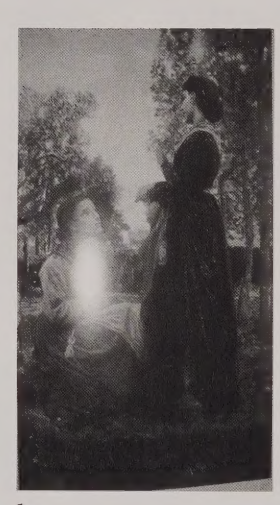
2 GIOVANNI FATTORI (Italian, 1825-1908). *Marina di Antignano with Fishermen,* 1893. Oil on canvas. 36.5 x 70 cm.

3 GIOVANNI FATTORI (Italian, 1825-1908). *Pasture in Maremma,* 1859. Oil on canvas. 32.2 x 77.5 cm.

4 SILVESTRO LEGA (Italian, 1826-1895). *The Task,* 1876. Oil on panel. 33.3 x 37.5 cm.

5 TELEMACO SIGNORINI (Italian, 1835-1901). *The Hills of Settignano,* 1885. Oil on canvas. 37 x 50 cm.

6 FEDERICO ZANDOMENEGHI (Italian, 1841-1917). *The Reading,* 1862. See color photo on inside back cover.



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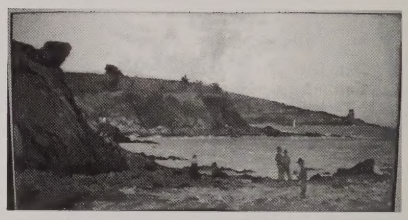

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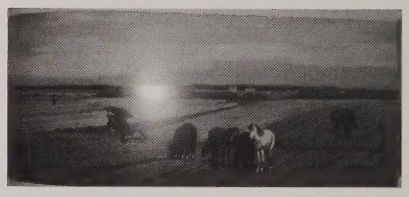

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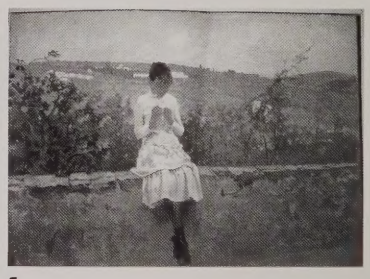

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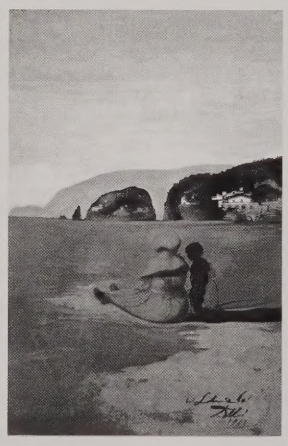
*The following two paintings were stolen by four armed robbers from The Scheringa Museum of Realist Art in Spanbroek, The Netherlands at noontime on May 1, 2009. *L09.335:*

7 SALVADOR DALÍ (Spanish, 1904-1989). *Adolescence,* 1941. Gouache. 44.8 x 30.2 cm. Signed l/r.

8 TAMARA DE LEMPICKA (Polish/American, 1898-1980). *The Female Musician,* 1929. See color photo on inside back cover.



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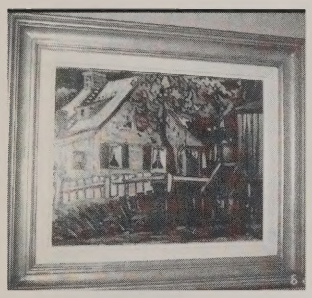

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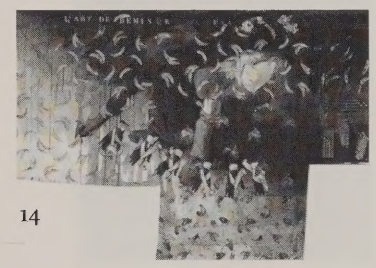

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*The following two paintings were stolen from a private residence in Sainte-Foy, Quebec, Canada on December 19, 2008. *N09.44:*

9 MARC-AURÈLE FORTIN (Canadian, 1888-1970). *Maison à Ste-Rose,* c. 2000. Oil on canvas. 16" x 20".

10 JEAN-PAUL RIOPELLE (Canadian, 1923-2002). *Couchant,* 1966. Oil on canvas. 100 x 100 cm.

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11 JUDY CASSAB (Australian, b. 1920). *Portrait of a Seated Lady,* 1958. Oil on canvas. 30" x 24". Signed. *L09.049. Stolen from a parking garage beneath a block of flats in London, England on December 12, 2008.

12 JEAN-BAPTISTE ANTOINE GUILLEMET (French, 1843-1918). *Harbor at Barfleur,* 1875. See color photo on inside back cover.

13 WILLIAM ADOLPHUS KNELL (English, 1802-1875). *Bringing in the Nets.* Oil on board. 6" x 9". Inventory no. 10942. Gallery label verso. *L09.152. Stolen from a gallery in Broadway, Worcestershire, England on May 1, 2008.

14 HASAN MUSA (Sudanese/French, b. 1951). *The Art of Clearing Mines,* 2005. 267 x 368 cm. Written u/l: "L'Art de Déminer…USA. " *L09.273. Stolen in transit between Brussels, Belgium and London, England on November 14, 2008.

The following two paintings by CORRADO GIAQUINTO *(Italian, 1690-1765), which were stolen in Washington, DC on June 1, 1960 and originally published in IFARreports, Vol. 13, no. 9, 1992, are still missing:*

15 *Spring.* Oil on canvas. 109.2 x 151.2 cm. *N92.275.2.

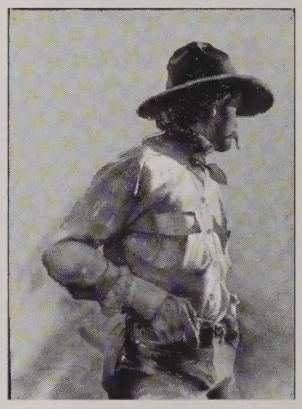
16 *Summer.* Oil on canvas. 109.2 x 151.2 cm. *N92.275.1.

WORKS ON PAPER

17 MYLES BIRKET FOSTER (English, 1825-1899). *Isola Bella, Lago Maggiore.* Watercolor. 8" x 12". Verso: Inventory no. 3790 and gallery label. *L09.152. Stolen from a gallery in Broadway, Worcestershire, England on May 1, 2008.

17

18 WILLIAM MATTHEWS (American, b. 1949). *Portrait of Waddie Mitchell,* 1996. Watercolor. 29" x 21 ½". Signed in black ink l/l. *N09.001. Stolen from a private residence in Vero Beach, FL on December 1, 2008.



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19 PABLO PICASSO (Spanish, 1881-1973). *Notebook of 32-33 pencil sketches,* c. 1917-1924. 16 x 23.88 cm. Shiny red cover inscribed with the word "Album" in gold. *L09.414. Stolen from the Picasso Museum in Paris on June 9, 2009. No image.

PRINTS

20 ANDY WARHOL (American, 1928-1987). *Chanel No. 5,* c. 1990. Serigraph. 50" x 50". Ed. no. 65/190. *N09.037. Stolen along with the entire contents of a truck in Delray Beach, FL on January 15, 2003.

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21 ANDY WARHOL (American, 1928-1987). *Mick Jagger,* 1975. See color photo on inside back cover.

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*The following prints were stolen from a private residence in Palm Beach, FL on August 1, 2008. *N08.605:*

22 PIERRE BONNARD (French, 1867-1947) *Place Clichy,* 1922. Lithograph. See color photo on inside back cover.

23 HENRI DE TOULOUSE-LAUTREC (French, 1864-1901) *The Jockey,* 1899. Lithograph. Artist's proof. 20 ¾" x 14 ¾".

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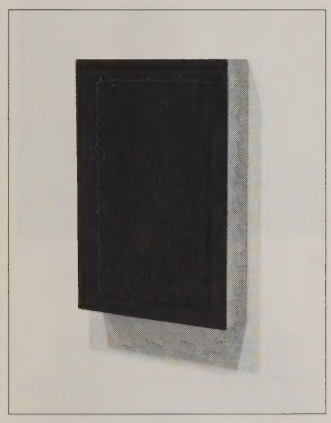

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24 LUCIEN FREUD (German/English, b. 1922). *After Chardin,* 2000. Etching. 59.6 x 73.4 cm.

25 LUCIEN FREUD (German/English, b. 1922). *Eli,* 2002. Etching. 77.29 x 95.55cm.

MIXED MEDIA

26 ALFONSO FRATEGGI BIANCHI (Italian, contemporary). *#243 Blue Prussia,* 2005. Wall sculpture. Pigment on limestone. 8 ¼" x 5 ¾"x 1 ¼". *N09.204. Stolen from a New York City gallery on April 18, 2009.

SCULPTURE

27 ELISABETH FRINK (English, 1930-1993). *Lying Horse,* 1972. Bronze. Ed. no. 3/4. 100 cm (H) x 75 cm (W) x 170 cm (D). Signed, probably on the base. *L09.276. Stolen from the grounds of a business in Lingfield, Surrey, England on April 8, 2009.

DECORATIVE ARTS

Miscellaneous

28 KEITH HARING (American, 1958-1990) and LA II [ANGEL ORTIZ] (American, b. 1967). *Vase,* 1982. See color photo on inside back cover.

Silver

29 UNKNOWN. (Chinese, 18th century). *Silver Filigree Box with Reverse Glass Painting,* c. 1790. Approx. 2 ¼" (H) x 4 ¼" (W) x 3" (D). *L09.265. Stolen from a gallery in London, England on July 1, 2008.

MISSING ART*

*The following six paintings were reported missing from the Stadsmuseum Ijsselstein in The Netherlands on May 11, 2009. *L09.368:*

1 JAN JOSEPHSZ. VAN GOYEN (Dutch, 1596-1656). *Walled City on a River,* 1646. Oil on canvas. 49 x 68 cm.

2 JAN JOSEPHSZ. VAN GOYEN (Dutch, 1596-1656). *A City Wall with Two Towers on a River,* 1634. Oil on canvas. 36.5 x 58.0 cm.

3 JAN JOSEPHSZ. VAN GOYEN (Dutch, 1596-1656). *The Pellekussen Gate at the Vecht near Utrecht,* 1656. Oil on canvas. 37.5 x 63.0 cm.

4 PIETER DE NEYN (Dutch, 1597-1639). *Farm at the Water,* c. 1630. Oil on canvas. 45 x 71 cm.

5 WILLEM ROELOFS (Dutch, 1822-1897). *Landscape with Cows,* c. 1885. Oil on canvas. 27.7 x 45.5 cm.

6 ADRIANUS VAN EVERDINGEN (Dutch, 1832-1920). *Grassy Landscape,* c. 1890. Oil on canvas. 31.7 x 46 cm.

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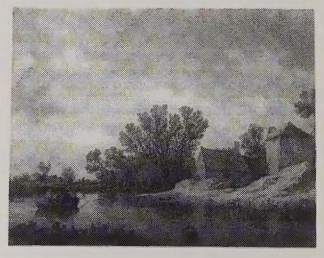

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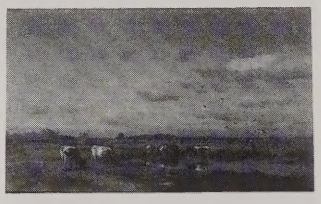

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*The following two paintings were reported missing from a gallery in Broadway, Worcestershire, England on May 1, 2008. *L09.152:*

7 ANTOINE BOUVARD (French, 1870-1956). *Gondola Venice.* Oil on canvas. 20" x 26". Inventory no. 10619. Gallery label on the stretcher.

8 ANTOINE BOUVARD (French, 1870-1956). *Looking Towards the Grand Canal, Venice.* Oil on canvas. 21" x 28". Inventory no. 10638. Signed l/l: a bouvard. Gallery label verso.

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**Numbering for the year 2009 Cumulative Index of Missing Art begins with this issue.*

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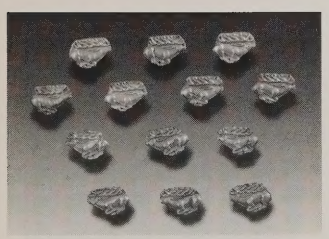

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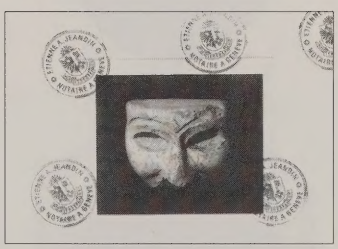

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9 THOMAS SULLY (CIRCLE OF) (American, 19th century). *Portrait of Margaret Adlum Barber,* 1853. Oil on canvas. 18" x 24". *N09.036. Lost in transit during a property move at the U.S. Naval Observatory in Washington, DC on January 2, 2001.

10 GLENN BROWN (English, b. 1966). *Head,* 1992. Oil on canvas. 51 x 78.2 cm. Verso: Signed, entitled, and dated. *N09.181. Lost in transit between London, England and Florida, USA on October 24, 2008.

DRAWINGS

11 CY TWOMBLY (American, b. 1929). *Untitled,* 1957. Double-sided drawing. Graphite on paper, 13 ¾" x 19". Signed l/r: Cy Twombly Roma May 57. *N09.140. Lost in transit in New York City, possibly left in a cab, on February 23, 2009.

ANTIQUITIES

*The following antiquities were lost in transit in Geneva, Switzerland on March 25, 2009. *L09.392:*

12 UNKNOWN (Bactrian, 3rd millennium BC). *Game Pieces.* Stone and copper. Approx. H: 1.4-5.3 cm. Approx. W: 1.2-3.5 cm.

13 UNKNOWN. (Scythian, 5th century BC). *Appliqués in the form of Panthers.* Gold. 4.1 x 2.95 cm.

14 UNKNOWN. (Scythian, 5th century BC). *Appliqués in the form of Flying Stags.* Gold. Approx. H: 2.6-2.7 cm. Approx. W: 3.8-3.9 cm.

15 UNKNOWN (Syrian, 3rd millennium BC). *Fragmentary Head of a Worshipper.* Limestone. H: 7.6 cm.

RECOVERED ART*

PAINTINGS

*The following two paintings, seized by the Nazis from Dr. Max Stern and sold in a forced sale at Lempertz Auction House in Cologne, Germany on January 1, 1937, were recovered with the help of the ALR and restituted to Stern's estate in April 2009. *W2004.40:*

1 LODOVICO CARACCI (Italian, 1555-1619). *Saint Jerome.* Oil on panel. 40.5 x 31 cm.

2 UNKNOWN (Northern Netherlandish School, 17th century). *Portrait of a Musician Playing a Bagpipe,* 1632. Oil on panel. 41 x 31.3 cm.

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*The following paintings, stolen from the Santo Spirito in Sassia Hospital in Rome, Italy on July 31, 2004 (*L04.1247), were recovered by the Carabinieri in December 2008 after they were found in the trailer of a suspected art smuggler:*

3 IL PARMIGIANINO (attrib. to) (Italian, 1503-1540). *Holy Family.* Oil on panel. 82 x 58 cm.

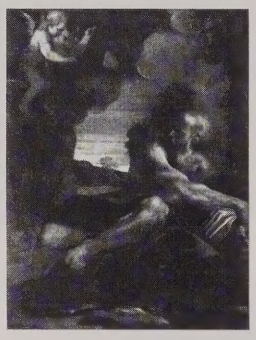
4 GIUSEPPE CESARI (IL CAVALIERE D'ARPINO) (Italian, 1568-1640). *Flagellation of Christ.* Oil on panel. 51 x 40 cm.

5 GIOVANNI LANFRANCO (Italian, 1582-1647). *Head of an Old Man.* Oil on canvas. 67 x 49 cm.

6 UNKNOWN (Italian). *Saint Mary of Egypt.* Oil on panel. 74 x 59 cm.

7 LUIGI GARZI (Italian, 1638-1721). *Baptism of Christ.* Oil on canvas. 63 x 44 cm.

8 UNKNOWN (Italian). *Cupid or Adonis.* Oil on canvas. 68 x 85 cm.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Numbering for the year 2009 Cumulative Index of Recovered Art begins with this issue.

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9 UNKNOWN (Italian). *Nativity.* Oil on panel. 35 x 35 cm.

10 ?GRANEE? (Italian). *Religious Ceremonies.* Oil on canvas. 99 x 74 cm.

11 GIROLAMO MUZIANO (School of) (Italian, 16th century). *Saint Jerome.* Oil on canvas. 47 x 34 cm.

SCULPTURE

12 HARRIET W. FRISHMUTH (American, 1880-1980). *The Nude.* Bronze fountain. Approx H: 5'6". This fountain, which weighs over 500 lbs., was stolen from the garden of the Grosse Pointe War Memorial in Michigan on May 22, 2001 (*L01.737). On May 6, 2009, local police found it at the bottom of the Detroit River during a routine dive to recover a submerged car. The photo shows the fountain being pulled from the water.

ANTIQUITIES

*The following Egyptian antiquities, stolen from the Bijbels Museum in Amsterdam, The Netherlands on July 29, 2007 (*L07.428) and listed in IFAR Journal, Vol 10, no. 1, were recovered by U.S. Immigration and Customs Enforcement (ICE) with the help of the ALR in May 2009 in New York:*

13 *Shabti of Ipu* (c. 1300-1100 BC). Alabaster. 17.0 cm (H) x 5.5 cm (W) x 4.5 cm (D). Inventory no. 0000321.

14 *Ptah-Seker-Osiris* (c. 1050-700 BC). Varnished wood. 29.0 cm (H) x 9.0 cm (W) x 5.0 cm (D). Inventory no. 000332 / C157.

15 *Harpocrates (Horus as a Child)* (c. 700-100 BC). Bronze. 12.5 cm (H) x 4.5 cm (W) x 8.3 cm (D). Inventory no. 000334 / C145.

16 *Imhoteb.* (c. 700-100 BC). Bronze. 13.7 cm (H) x 4.5 cm (W) x 7.5 cm (D). Inventory no. 000336 / C143.

17 *Scarab* (c. 664-525 BC). Serpentine. 3.0 cm (H) x 4.0 cm (W) x 5.5 cm (D). Inventory no. 000345 / C152.

17

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*The following archaeological items, stolen from the excavation office at Pompeii, Italy on June 26, 1997 (*L04.1558), were recovered by the Carabinieri on February 13, 2009 in London, where they had been consigned to an antiquities dealer:*

18 UNKNOWN (Pompeiian, 1st century AD). *Bacchus.* Fresco. 70 x 45 cm.

18

19 UNKNOWN (Pompeiian, 1st century AD). *Person Offering a Sacrifice.* Fresco. 80 x 60 cm.

19

20 UNKNOWN (Pompeiian, 1st century AD). *Woman.* Fresco.

20

21 UNKNOWN (Roman, 2nd century AD). *Votive Relief.* Stone.

21

22 UNKNOWN (Roman, 2nd century AD). *Front Part of a Sarcophagus depicting an inscribed plaque with Sea Monsters.* Marble. 30 x 105 x 7 cm.

22

23 UNKNOWN (Roman, 2nd century AD). *Diana and Endymion.* Marble relief. 44 x 115 cm.

23

ERRATA

In the last issue of IFAR Journal (Vol. 10, nos. 3&4), on page 67, under Missing Art, item 80, ROBERT MOTHERWELL'S *work on paper, Oval (Black Calligraphy), 1967, was incorrectly listed as Missing. In fact, it was later determined that the work had been torn up and used by the artist in a collage.*

• • •

Also on page 67 of the last issue of IFAR Journal (Vol. 10, nos. 3&4), on page 67, under Recovered Art (items 31-39), the caption incorrectly describes the location of the Noortman Gallery as Maastricht, Switzerland. Maastricht, OF COURSE *is located in The Netherlands!*

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STOLEN ART

6 **FEDERICO ZANDOMENEGHI** (Italian, 1841-1917). ***The Reading***, 1862. Oil on canvas. 37 x 30 cm. *L09.358. Stolen from a private residence in Montecatini Terme, Pistoia, Italy on March 18, 2008. See also item nos. 1–5 on p. 48, this issue.

8 **TAMARA DE LEMPICKA** (Polish/American, 1898-1980). ***The Female Musician***, 1929. Oil on canvas. 130 x 73 cm. Signed l/r: De Lempicka 29 Paris. *L09.335. Stolen by four armed robbers from The Scheringa Museum of Realist Art in Spanbroek, The Netherlands at noontime on May 1, 2009. See also item no. 7 on p. 48, this issue.

12 **JEAN-BAPTISTE ANTOINE GUILLEMET** (French, 1843-1918). ***Harbor at Barfleur***, 1875. Oil on panel. 6 ¼" x 9 ¼". Signed l/l in black: A. Guillemet. *L09.050. Stolen from a private residence in London, England on November 9, 2008.

21 **ANDY WARHOL** (American, 1928-1987). ***Mick Jagger***, 1975. Screenprint on Arches Aquarelle paper. 43 ½" x 29". Signed by both Warhol and Mick Jagger. Ed no. 37/250. Feldman catalogue raisonné #140.*N09.113. Lost in transit between San Fernando, CA and New York City on August 17, 2007.

22 **PIERRE BONNARD** (French, 1867-1947) ***Place Clichy***, 1922. Lithograph. 22 ½" x 29 ½". Ed. no. 69/100. *N08.605. Stolen from a private residence in Palm Beach, FL on August 1, 2008. See also item nos. 23–25 on pp. 50–51, this issue.

28 **KEITH HARING** (American, 1958-1990) and **LA II (ANGEL ORTIZ)** (American, b. 1967). ***Vase***, 1982. Acrylic, felt tip pen, and ink on fiberglass. H: 39". Diam: 24". Signed and dated by both artists on the bottom. *N09.205. Lost in transit between New York City and New Jersey on March 30, 2009.

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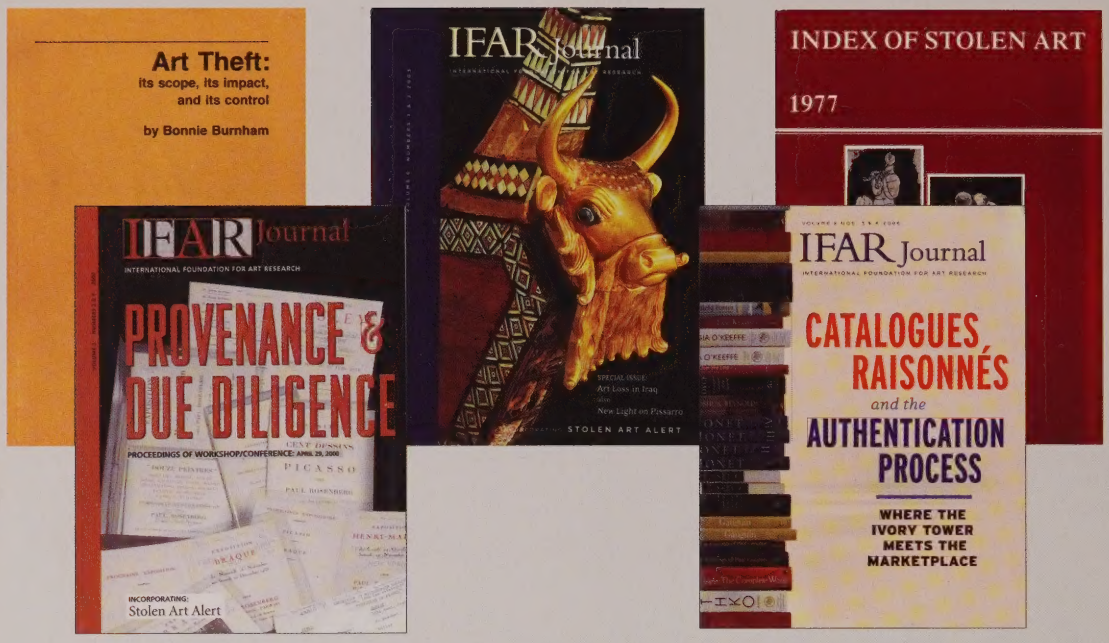

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